

EATON SOCON POWER LIMITED

DEADLINE 6 SUBMISSION

RESPONSE TO THE APPLICANT'S DEADLINE 5 SUBMISSION AND REQUIREMENT FOR PROTECTIVE PROVISIONS

PINS REFERENCE EN010141

1. Introduction

- 1.1 Eversheds Sutherland (International) LLP is instructed by Eaton Socon Power Limited (**ESPL**) in relation to the application for a Development Consent Order (**DCO**) submitted by BSSL Cambsbed 1 Limited (the **Applicant**) for East Park Energy Solar Farm, as more particularly described in the application documents (the **East Park Project**; the **East Park DCO**).
- 1.2 ESPL submitted a relevant representation on 14 January 2026 [[RR-329](#)], in which it objected in the strongest terms to the East Park Project and set out the steps that must urgently be taken by the Applicant in order to address ESPL's objection (the **Relevant Representation**).
- 1.3 ESPL has the benefit of planning permissions, the Main Site Lease, the Cable Easement Option and the Access Easement pursuant to the Access Easement Option (all as described and defined in its Relevant Representation) for its co-located 49.9MW solar park and 100MW battery energy storage system (**BESS**) that will connect to the Eaton Socon Substation in Bedfordshire (the **ESPL Project**). The ESPL Project is at an advanced stage of construction, with energisation due to take place in October 2026. The interface between the two projects arises where the East Park Project's grid connection corridor overlaps with the cable and access routes of the ESPL Project. The Applicant is seeking powers of compulsory acquisition, extinguishment of private rights, and temporary possession over land in which ESPL has interests and rights pursuant to the ESPL Project, including powers to extinguish or suspend private rights.
- 1.4 Without adequate protections, the powers sought by the Applicant may cause serious detriment to ESPL's statutory undertaking in the form of increased costs and prejudice to ESPL's ability to operate and maintain essential infrastructure. As currently drafted, the East Park DCO puts at risk the delivery and operation of well-advanced energy infrastructure that would otherwise shortly be providing urgently required renewable electricity generation and storage.
- 1.5 Since submitting its Relevant Representation, ESPL has been proactively engaging with the Applicant on the negotiation of provisions for the protection of the ESPL Project. While there has been a degree of engagement from the Applicant, negotiations have been hampered by considerable delay on the part of the Applicant, and substantive agreement has not yet been reached on a form of protective provisions that adequately addresses the risk of serious detriment to the ESPL Project.

Applicant's D5 Submission

- 1.6 At Deadline 5, the Applicant submitted a representation with regard to ESPL [[REP5-024](#)] (the **Applicant's D5 Submission**). In that submission, the Applicant acknowledged that ESPL was granted an electricity generation licence by Ofgem on 22 June 2026, giving it the status of statutory undertaker. On that basis, the Applicant asserted that the provisions for the protection of electricity, gas, water and sewerage undertakers under Part 1 of Schedule 13 (**Part 1 PPs**) of the draft East Park DCO [[REP5-005](#)] were sufficient to protect the ESPL Project. In turn, it rejected ESPL's requests for alternative protective provisions, and otherwise declined to remove ESPL's land interests from the DCO, Book of Reference, Land Plans or Works Plans.
- 1.7 The Applicant further argues that the test of serious detriment under section 127 of the Planning Act 2008 is not applicable to ESPL; this is not correct. Taken together, the

Applicant's D5 Submission fundamentally misrepresents and fails to address ESPL's concerns and comprises a solution that does not satisfy the statutory requirements under sections 127 and 138 of the Planning Act 2008 for the reasons set out in this submission.

ESPL's Position

- 1.8 ESPL does not accept that the protections afforded by Part 1 of Schedule 13 of the draft DCO are adequate to safeguard the ESPL Project, nor that the Applicant's assessment of the statutory requirements under sections 127 and 138 of the Planning Act 2008 is correct.
- 1.9 ESPL has endeavoured to reach agreement on suitable protections with the Applicant. The Applicant has not at any point in the course of negotiations conveyed to ESPL the position it set out in the Applicant's D5 Submission. The approach the Applicant has taken in making a unilateral submission to the Examining Authority (**ExA**) at this late stage in the examination, without discussing or giving prior notice to ESPL of the view it set out in that submission has caused significant delay and frustration in progressing agreed protective provisions that are actually appropriate and sufficient.
- 1.10 The ESPL Project delivers benefits in terms of essential low carbon infrastructure pursuant to the UK Government's Clean Power 2030 plan of the same nature as the East Park Project, but is already under construction with an energisation date of October 2026. The tangible benefits of the ESPL Project must not be prejudiced by East Park: a project serving similar objectives but years from delivering on those and currently without secured land rights or consent.
- 1.11 For the reasons set out in ESPL's Relevant Representation and this submission, ESPL requests that the ExA and Secretary of State include bespoke protective provisions for the protection of ESPL and the ESPL Project in any DCO granted for the East Park Project. The appropriate provisions for the protection of ESPL and the ESPL Project are set out in **Schedule 1** to this submission (the **ESPL Protective Provisions**).

2. The ESPL Project Status and Interests

- 2.1 The ESPL Project benefits from two planning permissions:
 - 2.1.1 a planning permission carrying reference 24/00858/MAF granted by Bedford Borough Council on 31 January 2025 for the installation of a solar array of up to 49.9MW (alternating current) (the **Solar Permission**); and
 - 2.1.2 a planning permission carrying reference 22/01828/MAF granted by Bedford Borough Council on 4 May 2023 (as amended by non-material amendment with reference 23/02436/NMA granted on 5 December 2023) for the installation of up to 100MW of BESS (the **BESS Permission**).
- 2.2 As noted above, ESPL has secured the Main Site Lease, the Cable Easement Option and the Access Easement drawn down pursuant to the Access Easement Option for the **ESPL Project**. ESPL has drawn down the Access Easement and has served notice to draw down the easement pursuant to the Cable Easement Option. It is anticipated that the private rights under the Cable Easement Option will form a land interest of ESPL under the easement substantially in advance of the making of any DCO for the benefit of the East Park Project.
- 2.3 ESPL has a Grid Connection Agreement with UKPN which is in full force and effect with a contracted energisation date of October 2026. ESPL has successfully passed through the National Energy System Operator's grid Connections Reform process. Both ESPL and UKPN have completed their detailed design works, placed the relevant equipment orders, and are entering the construction phase imminently. ESPL has already placed orders for the long-term electrical equipment and secured funding for construction.
- 2.4 On 22 June 2026, the Gas and Electricity Markets Authority (Ofgem) granted ESPL an electricity generation licence pursuant to section 6 of the Electricity Act 1989 (the **ESPL**

Licence). ESPL is therefore a statutory undertaker for the purposes of the Planning Act 2008.

- 2.5 In stark comparison to the East Park Project, the ESPL Project is now very well advanced, with land and planning rights, grid connection arrangements secured and energisation due to take place within 2 months of the date of this submission, significant capital expenditure already invested and construction at an advanced stage.
- 2.6 The ESPL Project represents urgently needed low carbon infrastructure to meet the Government's Clean Power 2030 Mission and net zero objectives. The Overarching National Policy Statement (**NPS**) for Energy (**EN-1**) (December 2025) establishes battery energy storage systems are urgently required to support the transition to renewable energy sources and NPS EN-1 states that *"storage has a key role to play in meeting the Clean Power 2030 Mission, achieving net zero and providing flexibility to the energy system, reducing the amount of generation and associated network that needs to be built to meet peak demand, helping Britain reach clean power in a cost-effective way and reducing delivery risk associated with other types of energy infrastructure"* (paragraph 3.3.25, NPS EN-1). The NPS for Renewable Energy Infrastructure (EN-3) (December 2025) confirms that *"Solar energy is at the heart of our Clean Power 2030 Mission"* (paragraph 2.10.2, NPS EN-3). Moreover, the Clean Power 2030 Action Plan (December 2024) confirms that the target total installed capacity of solar installations is 45-47 GW by 2030: more than twice the installed capacity in March 2025. The ESPL Project directly contributes to the Government's energy policy objectives, and its advanced stage of development supports the realisation of that contribution in the short term.
- 2.7 The interface between the two projects arises where the East Park Project's grid connection corridor overlaps with the Cable Easement Option land and Access Easement land forming part of the ESPL Project. The Applicant is seeking powers under the East Park DCO to acquire new rights over these areas of land which are within plots 14-9 and 14-12 of the updated East Park Project Land Plan [[REP5-004](#)] (the **Land Plan**) in which new rights are proposed to be acquired for the purposes of Work No.4 shown in Sheet 14 of the Works Plans [[APP-009](#)] and as further detailed with reference to Overlap Land in ESPL's Relevant Representation.
- 2.8 Without adequate protective provisions, the exercise of DCO powers could: (i) acquire or extinguish ESPL's land interests, including the Main Site Lease, Cable Easement Option and Access Easement; (ii) interfere with ESPL's apparatus and operations; (iii) disrupt ESPL's contracted energisation date of October 2026; and (iv) prevent or delay the delivery of urgently needed low carbon infrastructure and urgently required renewable energy generation pursuant to the Clean Power 2030 Action Plan.
3. **Progress of Negotiations and the Applicant's D5 Submission**
- 3.1 ESPL does not object in principle to the East Park Project and has sought to engage constructively with the Applicant.
- 3.2 Subsequent to the submission of ESPL's Relevant Representation and the Applicants Responses to Relevant Representations [[REP1-055](#)], ESPL prepared a draft set of protective provisions and draft side agreement and issued these to the Applicant. Negotiations proceeded on the basis that the parties would work together on bespoke protective provisions and a side agreement.
- 3.3 At no point has the Applicant in any capacity prior to its Deadline 5 submission proposed for ESPL to rely solely on Part 1 of Schedule 13. The Applicant's D5 Submission, asserting that the Part 1 PPs are sufficient and rejecting the need for bespoke provisions, was the first occasion on which the Applicant communicated this position. The Applicant's approach of engaging in negotiations on a set of protective provisions whilst separately preparing a submission to assert the sufficiency of generic Part 1 PPs has frustrated ESPL's legitimate attempts to agree appropriate protections through negotiation.
- 3.4 ESPL remains willing to engage constructively with the Applicant to agree the terms of protective provisions and/or a side agreement. However, given the Applicant's conduct in the course of the examination, ESPL considers it necessary to seek inclusion of the ESPL

Protective Provisions in the DCO to ensure that appropriate protections are secured regardless of whether agreement is reached.

- 3.5 In terms of the substance of the Applicant's D5 Submission, this contains several fundamental errors and misrepresentations.
- 3.6 The Applicant mischaracterises the interface between the East Park Project and the ESPL Project as merely cable crossing. This fundamentally trivialises the risk posed by two cable systems in close proximity, which can create specific electromagnetic and thermal interactions that can permanently impair performance, as set out in detail in section 4 of ESPL's Relevant Representation. There is no acknowledgement or consideration of this in the Applicant's D5 Submission.
- 3.7 The Applicant has asserted that the statutory test for serious detriment under section 127 of the Planning Act 2008 does not apply to ESPL on the basis that it is only applicable to holders of a transmission licence, electricity system operator licence, or distribution licence which have powers under Schedule 3 of the Electricity Act 1989 pursuant to section 10 of that Act and section 127(8) of the Electricity Act 1989 (paragraphs 3.1.2 – 3.1.4 of the Applicant's D5 Submission). The Applicant has fundamentally misrepresented the meaning of this statutory test in relation to ESPL.
- 3.8 Section 10 does not limit the powers under Schedule 3 to those specified licence holders: it includes any other licence holder, to the extent that the licence so provides (section 10(1)(b), Electricity Act 1989). The ESPL Licence gives effect to Standard Condition 14 of the Electricity Generation Licence: Standard Conditions (1 October 2024) which incorporates the powers under Schedule 3 of the Electricity Act 1989. Accordingly, the serious detriment test is applicable to the granting of any East Park DCO with regard to ESPL's statutory undertaking.
- 3.9 Specifically, the test requires that an order granting development consent which includes provisions for the creation of a new right over land (such as the Applicant is seeking in relation to ESPL's rights and interests within plots 14-9 and 14-12 of the Land Plan pursuant to articles 23, 24, and 27 and Schedule 9 of the draft East Park DCO) the Secretary of State must be satisfied that the nature and situation of the land are such that the right can be purchased without serious detriment to the carrying of the statutory undertaker's undertaking, or any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by use of other land belonging to or available for acquisition by them (sections 127(5) and 127(6) of the Planning Act 2008).
- 3.10 This test applies to ESPL as a statutory undertaker within the meaning of section 127(8) of the Planning Act 2008 and the rights to land interests that have been acquired by ESPL for the purpose of its undertaking. ESPL has made this representation and the Relevant Representation demonstrating that it holds a land interest in the Access Easement, and that the private rights currently held by ESPL under the Cable Easement Option will shortly form a land interest through the easement that is in the process of being drawn down. ESPL's rights and subsequent interests in the relevant land are therefore held for the purpose of ESPL's undertaking (section 127(1) of the Planning Act 2008). No provision for alternative land is available or has been offered by the Applicant, and therefore the Secretary of State cannot satisfy itself that the serious detriment test has been met by the Applicant.
- 3.11 The Applicant's D5 Submission asserts that the relevant test is one of "necessity" (paragraph 3.1.4) and refers to the test set out in section 138 of the Planning Act 2008 which provides that the order may include provision for the extinguishment of a relevant right or the removal of the relevant apparatus vested in or belonging to a statutory undertaker (all as defined in that section of the 2008 Act) only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates. However, the Applicant's purported demonstration of necessity at paragraph 3.1.14 of the Applicant's D5 Submission is wholly inadequate.
- 3.12 The Applicant argues that the test of necessity is demonstrated by cross-referencing its Statement of Reasons [REP4-004], the Land and Rights Tracker [REP4-006], and the Book

of Reference [REP3-017] to identify which works are required in each plot and states that by referring to these documents *"the Examining Authority and Secretary of State will be able to determine which works are required in each plot and why the right is therefore necessary"* (paragraph 3.1.14 of the Applicant's D5 Submission). In other words: the Applicant appears to be concluding that the land is 'necessary', simply because it has been included in its submission documents, and therefore it is 'necessary'. This mechanistic approach fundamentally misunderstands the nature of the statutory test and purpose of the DCO examination process. The test under section 138(4) of the Planning Act 2008 is not merely whether any development is proposed within a plot, but whether the extinguishment or removal of the specific statutory undertaker's rights or apparatus is *"necessary for the purpose of carrying out the development"* (section 138(4) of the Planning Act 2008).

- 3.13 Furthermore, the *Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land* (the **Guidance**) further requires the Applicant to satisfy the Secretary of State that: *"all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored"* and that *"the land to be acquired is no more than is reasonably required for the purposes of the development"*. Compulsory acquisition powers are a "last resort" and cannot be granted unless alternative options have been exhausted.
- 3.14 The Applicant has not demonstrated that the extinguishment or interference with ESPL's rights and apparatus (including the Cable Easement Option and Access Easement) is necessary, as opposed to merely convenient or desirable. The Applicant has retained a wide grid connection corridor for Work No. 4 and has failed to demonstrate why a narrower corridor, or an alternative route that avoids ESPL's land interests entirely, could not achieve the same purpose. In the absence of such evidence, the Secretary of State cannot be satisfied that the test of necessity under section 138(4) has been met.
- 3.15 Moreover, in the Applicant's D5 Submission, the Applicant argues that the shortcomings of the Part 1 PPs are addressed by its own perspective and speculation on whether the exercise of certain powers it is seeking to secure in the East Park DCO would be 'commercially viable' or 'rational' (paragraph 5.1.1 and Table 1 of the Applicant's D5 Submission). These assumptions provide no legal certainty and could be entirely inapplicable to a future transferee with different commercial incentives. This is plainly not sufficient to satisfy the Secretary of State that Part 1 PPs would protect ESPL's statutory undertaking from serious detriment.
- 3.16 ESPL's objection, as previously set out in its Relevant Representation [**RR-329**], is that the compulsory acquisition and temporary possession powers proposed in the East Park DCO, if exercised, puts the ESPL project at risk of serious detriment and that the powers sought are not necessary. In order for the statutory tests regarding serious detriment and necessity to be satisfied, the Applicant must either remove the Overlap Land from the Order Land, or provide appropriate protective provisions that safeguard ESPL's statutory undertaking.

4. **Protective Provisions**

- 4.1 Part 1 of Schedule 13 of the DCO is a generic set of provisions for the protection of electricity, gas, water and sewerage undertakers in respect of their apparatus. It is not designed to address the specific circumstances of the interface between the East Park Project and the ESPL Project.
- 4.2 The ESPL Protective Provisions are aligned with industry standard provisions for interfaces of this nature, and have been included in DCOs on similar terms for interfaces between solar Nationally Significant Infrastructure Projects and other renewable developments and grid infrastructure.
- 4.3 ESPL submits that Part 1 of Schedule 13 is inadequate to protect its interests for the following reasons.
- 4.4 *Protection of land interests*
 - 4.4.1 Part 1 of Schedule 13 only protects apparatus (defined as electric lines or electrical plant). It does not protect the acquisition of any land or apparatus

owned or leased by ESPL, nor does it prevent the extinguishment or interference with ESPL's easements, interests or rights including the Cable Easement Option and Access Easement. The Applicant acknowledges in its D5 Submission that Part 1 does not protect ESPL's land interests, only apparatus.

- 4.4.2 This is a fundamental gap. Under Part 1, the Applicant could acquire ESPL's land interests or extinguish the Cable Easement Option or Access Easement without ESPL's agreement. This could stop the delivery and operation of the ESPL Project in its tracks, and have consequences on the ESPL Project that the Applicant may not anticipate in a unilateral exercise of such powers.
- 4.4.3 The ESPL Protective Provisions address this by providing that the undertaker may not appropriate, acquire or take temporary possession of any land or apparatus owned or leased by ESPL, or appropriate, acquire, extinguish, interfere with or override any easement, interest or right of ESPL, otherwise than by agreement (such agreement not to be unreasonably withheld or delayed) (paragraph 5(1) of the ESPL Protective Provisions).

4.5 *Approval of plans and works*

- 4.5.1 Part 1, paragraph 7 provides only 28 days for the undertaker to submit a plan before starting works near retained apparatus, with 21 days for the utility undertaker to make "reasonable requirements". The utility undertaker may make "reasonable requirements" but has no right to approve the plans or refuse consent. If ESPL's requirements are challenged as "unreasonable", the matter goes to arbitration with no guaranteed outcome.
- 4.5.2 The Applicant argues that paragraph 7(2) "reasonable requirements" are sufficient. However, the Applicant conflates "making reasonable requirements" with "approval". This is a fundamental misrepresentation of the legal effect of Part 1. This paragraph requires the undertaker to submit a plan and permits the utility undertaker (ESPL, in this case) to make "reasonable requirements" – it does not provide an approval right. ESPL cannot refuse or withhold consent. If ESPL's requirements are challenged as "unreasonable", the matter goes to arbitration under article 43 (arbitration) of the draft DCO with no guaranteed outcome. This is wholly inadequate given that the ESPL Project represents essential infrastructure which requires secure means of operation.
- 4.5.3 The ESPL Protective Provisions provide 56 days for ESPL to approve plans before specified works commence, with the ability to request further particulars (and the clock does not run until such particulars are provided). Works must be carried out in accordance with approved plans, with such modifications as ESPL may direct. This provides ESPL with appropriate control over works that may affect its infrastructure (paragraphs 6(1) to 6(4) of the ESPL Protective Provisions).

4.6 *Protection against electromagnetic interference, thermal effects and vibration*

- 4.6.1 The interface between the two projects involves two high voltage cable systems in close proximity. ESPL's Relevant Representation identified that the proximity of adjacent cables could cause "increased induced voltages and currents... higher losses, and potential insulation stress... reducing its current-carrying capacity and accelerating insulation aging" with resulting significant loss of revenue to ESPL. As set out in its Relevant Representation, ESPL specifically requires that works details include adequate offset distances from the ESPL access routes and grid connection corridor in order to safeguard ESPL infrastructure from any physical damage or loss of efficiency.
- 4.6.2 Part 1 contains no express protection against EMI, thermal effects or vibration risks. The definition of "specified works" in Part 1 is triggered by works "near to, or will or may affect" apparatus, but there is no defined minimum proximity threshold (such as a 10-metre buffer zone) within a provision for works which may adversely affect ESPL's apparatus, which is required to ensure certainty

between ESPL and the Applicant. There is no requirement in Part 1 to maintain adequate offset distances to prevent EMI, thermal effects or physical damage, and no protection for transmission capacity, efficiency or reliability.

4.6.3 The Applicant argues that paragraph 7(2) allows ESPL to insist on “reasonable requirements” which “*could well include offset distances where they are reasonable*”. However, “could well include” provides no legal certainty whatsoever. Part 1 places no defined proximity threshold. If ESPL requests a 10-metre offset distance, the undertaker could argue it is “unreasonable” and the matter would go to arbitration with no guaranteed outcome. The burden should not be on ESPL to justify protective measures; the Applicant should bear the obligation to maintain adequate distances and ensure that the East Park Project does not cause serious detriment to ESPL’s statutory undertaking and the operation of essential low carbon and renewable generation infrastructure.

4.6.4 The Applicant characterises the interface as merely “that of cabling”. This fundamentally trivialises the risk. Two high voltage cable systems in close proximity may create specific electromagnetic and thermal interactions that can permanently impair performance. The ESPL Protective Provisions define “specified works” to include works within 10 metres in any direction from apparatus (paragraph 2 of the ESPL Protective Provisions), and include express requirements that works must not adversely affect transmission capacity, efficiency or reliability, and must maintain adequate offset distances to prevent EMI, thermal effects or physical damage (paragraphs 6(5)(d) and 6(5)(e) of the ESPL Protective Provisions).

4.7 *Engineering assessment*

4.7.1 Part 1 contains no provision for an independent engineering assessment to evaluate the impact of works on ESPL’s apparatus.

4.7.2 Given the technical complexity of the interface between two cable systems, ESPL requires the ability to commission an independent engineering assessment where works cross or are within 10 metres of ESPL’s apparatus. The ESPL Protective Provisions include such a requirement at paragraph 6(8), with the undertaker required to implement mitigation measures that ESPL reasonably requires.

4.8 *Traffic management and access*

4.8.1 The construction of the East Park Project could cause severe traffic disruption with the potential to interrupt access and egress arrangements from the ESPL site and in turn delay construction and/or maintenance works. To ensure the timely construction and operation ESPL Project, ESPL requires that all construction or operational traffic management arrangements within the vicinity of the ESPL Project must be submitted to and approved by ESPL.

4.8.2 Part 1 contains no requirement to submit a programme of works, avoid disruption, or address traffic management. The only generic protection is that the utility undertaker can make “reasonable requirements” for “securing access” to retained apparatus. This is wholly inadequate.

4.8.3 The Applicant argues that ESPL has “no authority on which to assert control over the use of public highways” and that construction traffic will be managed through the CTMP approved by the local planning authority. However, ESPL’s concern is not about controlling public highways generally – it is about ensuring the East Park Project’s construction and operational traffic does not physically obstruct ESPL’s access routes to its site and apparatus. The CTMP is approved by the local planning authority in the public interest (highway safety and amenity), not to protect ESPL’s private operational access. The Applicant offers no mechanism for ESPL to ensure its own vehicles can access its site without disruption.

- 4.8.4 The ESPL Protective Provisions require submission of a programme 56 days in advance to avoid disruption to the ESPL Project (paragraph 6(1) of the ESPL Protective Provisions). If access to apparatus is materially obstructed, the undertaker must provide alternative access no less effective than the existing access (paragraph 12 of the ESPL Protective Provisions). This directly addresses the critical risk to the ESPL Project.
- 4.9 *Costs recovery, indemnity and insurance*
- 4.9.1 Part 1, paragraph 9 provides only “reasonable compensation” for damage to apparatus or interruption of services. The ESPL Protective Provisions include a broad indemnity at paragraph 10 covering damage, interruption of services and liability to third parties, with payment within 30 days of an invoice or claim. “Reasonable compensation” under Part 1 is unlikely to cover the full range of consequential losses that ESPL could suffer as result of the East Park Project disrupting the delivery and operations of the ESPL Project, as further set out at paragraph 4.10 below.
- 4.9.2 Part 1 contains no insurance requirement. The Applicant argues that insurance is only needed for “significant risks to public safety” (such as railways, gas pipelines and highways) and that a cable crossing is a “distinctly different order” of risk. This trivialises the interface. The financial exposure is not merely “cable repair” – it includes loss of a 40-year revenue stream and the operation of critical grid services and renewable energy generation. Without insurance, ESPL has no assurance of the undertaker’s capacity to meet indemnity claims. Insurance protects against the undertaker’s insolvency or inability to pay, which is particularly relevant given the early stages of the East Park Project and that the Order could be transferred to a third party.
- 4.10 *Facilities and rights for alternative apparatus*
- 4.10.1 Under Part 1, paragraph 6, if alternative facilities and rights are “less favourable” than the original facilities, the only remedy is for the arbitrator to make “provision for the payment of compensation” – a purely compensatory remedy.
- 4.10.2 Under the ESPL Protective Provisions, if alternative facilities and rights are less favourable, the arbitrator can order facilities and rights that are “no less favourable” – securing ESPL’s operational position (paragraph 8 of the ESPL Protective Provisions). Given that ESPL is delivering essential infrastructure with a contracted energisation date of October 2026, it is essential that ESPL’s operational capability is preserved, not merely compensated. Compensation cannot ensure the continued delivery of renewable energy generation, grid flexibility and storage capacity that ESPL’s project is designed to provide.
- 4.11 In summary, the following protections included in the ESPL Protective Provisions are absent from Part 1 of Schedule 13:
- 4.11.1 protection of ESPL’s land interests (Main Site Lease, Cable Easement Option, Access Easement) from compulsory acquisition of new rights, temporary possession or interference;
- 4.11.2 a minimum 10-metre buffer zone defining specified works;
- 4.11.3 express protection against EMI, thermal effects and physical damage from vibration;
- 4.11.4 56-day approval period (rather than 28-day notice period) with ability to request further particulars;
- 4.11.5 requirement for independent engineering assessment where works cross or are within 10 metres of apparatus;

- 4.11.6 programme submission and traffic management provisions;
 - 4.11.7 broad indemnity (not merely “reasonable compensation”) for damage and consequential losses and insurance to ensure damages and other costs are recoverable; and
 - 4.11.8 preservation of rights and facilities (rather than compensation for less favourable facilities).
- 4.12 The ESPL Project is not viable unless it can install and maintain its connection to the grid and exercise its access rights to the site. It follows that the potential extinguishment, suspension or overriding of ESPL’s interests, and the exercise of the related powers under the DCO poses such a threat to the viability of the ESPL Project at a late stage in its development that the related cost exposure for the Applicant in compensating ESPL would be severe. In the case of forced abandonment of the ESPL Project due to the cost and delivery risk posed by the powers sought by the Applicant in the draft East Park DCO, the following non-exhaustive list of losses would be incurred by ESPL:
- 4.12.1 all capital invested into the project by the end of construction, including interest and returns accrued on the funding;
 - 4.12.2 loss of future revenue, earnings and returns from the project across a 40-year operational period, in addition to loss in asset value;
 - 4.12.3 technical and financial breach of debt covenants which may result in senior lender exercising security and wiping out the value of equity;
 - 4.12.4 potential compensation due to the landowner who would still be owed the lease amount for the full lease term;
 - 4.12.5 compensation due to the grid operator for cancellation of the connection and future grid fees forgone;
 - 4.12.6 compensation due to the local community benefit fund for amounts that would otherwise have been paid over the lifetime of the ESPL Project;
 - 4.12.7 compensation for liabilities due to revenue and cost counterparties under material project contracts for failing to meet obligations under those contracts;
 - 4.12.8 costs to decommission the ESPL Project, dispose of equipment, and reinstate the land; and
 - 4.12.9 material legal, professional, and other related fees.
- 4.13 In the case of disruption to the ESPL Project (short of forced abandonment), the following non-exhaustive list of losses would be incurred by ESPL:
- 4.13.1 loss of revenue and increased financial costs including interest, either due to a delay to construction or an interruption of operations;
 - 4.13.2 payment of mandatory costs to landowners, maintenance providers, grid operators and other suppliers that would have otherwise been funded from the revenues of the ESPL Project;
 - 4.13.3 the termination of critical revenue or cost related contracts, causing long-term loss of value;
 - 4.13.4 triggering of a technical or financial breach of debt covenants resulting in senior lender exercising security and wiping out the value of equity;
 - 4.13.5 failing to meet the grid connection date and the possibility of the ESPL Project losing its grid connection; and

4.13.6 material legal, professional, and other related fees.

- 4.14 The risks to the viability of the ESPL Project would be completely unacceptable from a legal and policy perspective. Put simply, the promotion of a new solar and BESS project should not serve to compromise the viability of a consented and under construction solar and BESS project – a project that is deliverable in the context of a 2030 target of 45-47GW of deployed solar under the Clean Power Action Plan (2024), and a 70GW solar deployment target by 2035 in the British Energy Security Strategy (2022). Such targets are ultimately imperative to ensuring legally binding decarbonisation obligations under the Climate Change Act 2008 (as amended) are met.
- 4.15 Accordingly, Part 1 of Schedule 13 is not adequate to ensure that ESPL's undertaking can be carried on without serious detriment within the meaning of sections 127 and 138 of the Planning Act 2008. The risks identified above – including loss of land interests, inadequate approval mechanisms, absence of EMI and thermal protections, inadequate cost recovery, and no insurance or transfer protections – could each individually cause serious detriment to ESPL's undertaking. Cumulatively, they create a material risk to the carrying on of ESPL's undertaking. The ESPL Protective Provisions are specifically designed to address each of these risks and would enable the Secretary of State to be satisfied that the statutory tests can be satisfied.

5. **Conclusion**

- 5.1 ESPL does not object in principle to the East Park Project. However, ESPL's undertaking – the ESPL Project – represents urgently needed low carbon infrastructure to meet the Government's Clean Power 2030 Mission and legally binding decarbonisation obligations under the Climate Change Act 2008. The ESPL Project is substantially advanced, with planning permissions, land interests and grid connection secured, significant capital expenditure invested, and a contracted energisation date of October 2026.
- 5.2 The Applicant's proposed reliance on Part 1 of Schedule 13 is not sufficient to protect the ESPL Project. Part 1 does not protect ESPL's land interests (including the Main Site Lease, Cable Easement Option and Access Easement), provide adequate approval mechanisms or protections against EMI and thermal effects, nor provide adequate cost recovery, appropriate indemnities or provision for insurance. These are fundamental gaps that leave the ESPL Project exposed and pose a risk of serious detriment to ESPL's undertaking within the meaning of sections 127 of the Planning Act 2008. The extent of land which is proposed to be subject to the extinguishment of existing rights by the Applicant under the draft DCO is indiscriminate and cannot meet the 'necessary' test under section 138 of the Planning Act 2008.
- 5.3 ESPL requests that the Examining Authority and Secretary of State include the ESPL Protective Provisions (set out in Schedule 1) in any DCO granted for the East Park Project. This will enable the Secretary of State to be satisfied that the statutory requirements under sections 127 and 138 of the Planning Act 2008 are met, and will ensure that two essential low carbon energy projects can coexist without prejudice to either.

Eversheds Sutherland (International) LLP
18 August 2026

SCHEDULE 1 – ESPL PROTECTIVE PROVISIONS

PROTECTIVE PROVISIONS

FOR THE PROTECTION OF EATON SOCON POWER LIMITED

Application

1. (1) For the protection of ESPL as referred to in these Protective Provisions the following provisions have effect, unless otherwise agreed in writing between the Undertaker and ESPL.

Interpretation

2. In these Protective Provisions —

"Acceptable Credit Provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group; and (ii) "A3" if the rating is assigned by Moody's Investors Services Inc;

"Acceptable Insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £10,000,000 (Ten Million Pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be effected and maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised works by or on behalf of the undertaker which constitute specified works; and arranged with an insurer whose security/credit rating meets the same requirements as an Acceptable Credit Provider, such policy shall include (but without limitation): (a) a waiver of subrogation, and an indemnity to principal clause, in favour of ESPL; and (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000 (Ten Million Pounds) per occurrence or series of occurrences arising out of one event or £10,000,000 (Ten Million Pounds) in aggregate;

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of ESPL to enable ESPL to fulfil its functions in relation to the ESPL Project in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by ESPL for the purposes of the ESPL Project, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of ESPL and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus, and for the avoidance of doubt shall include the ESPL cable connection and any associated infrastructure comprised in the ESPL Grid Connection;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of the Order and includes any associated development authorised by the Order and for the purposes of these Protective Provisions includes

the use and maintenance of the authorised works and construction of any works authorised by the provisions of this Part of this Schedule;

"Commence" and **"commencement"** in these Protective Provisions includes any below ground surveys and associated monitoring, ground work operations or the erection of construction plant and equipment;

"Eaton Socon Substation" means the National Grid electricity transmission substation at Eaton Socon, Bedfordshire;

"ESPL" means Eaton Socon Power Limited (Company Registration Number [12921574] whose registered office is at Fourth Floor, Burlington Building, 19 Heddon Street, London, United Kingdom, W1B 4BG;

"ESPL Grid Connection" means the cable connection from the ESPL Project site to the Eaton Socon Substation in Bedfordshire, including any cable easement route for which ESPL holds the Cable Easement Option and any associated access arrangements;

"ESPL Planning Permissions" means: (a) planning permission reference 24/00858/MAF granted on 31 January 2025 for the installation of a solar array of up to 49.9MW; and (b) planning permission reference 22/01828/MAF granted on 4 May 2023 (as amended by reference 23/02436/NMA on 5 December 2023) for the installation of up to 100MW of battery energy storage system; as may be varied, changed, amended or non-materially amended under sections 73 and 96A of the Town and Country Planning Act 1990;

"ESPL Project" means the co-located 49.9MW solar park and 100MW battery energy storage system authorised by the ESPL Planning Permissions, together with the ESPL Grid Connection, which will connect to the Eaton Socon Substation in Bedfordshire;

"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;

"maintain" and **"maintenance"** includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of ESPL or the ESPL Project: construct, use, repair, alter, inspect, renew 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 properly and sufficiently to describe and assess the works to be executed;

"Protective Provisions" means the provisions of this Part of this Schedule for the benefit of ESPL;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 10 metres measured in any direction of any apparatus the removal of which has not been required by the

undertaker under paragraph 7(2) (*facilities and rights for alternative apparatus*) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise

and for the avoidance of doubt shall include all works comprised in Work No. 4 of the authorised development (being the 400kV electrical cable connection between the East Park Energy Substation and the Eaton Socon Substation) within the vicinity of the ESPL Project and the ESPL Grid Connection;

"undertaker" means BSSL Cambsbed 1 Limited (Company Registration Number [to be confirmed]) and any person who has the benefit of the Order pursuant to article 5 (*benefit of the Order*) or section 156 of the Planning Act 2008;

On Street Apparatus

3. Except for paragraphs 6 (*retained apparatus: protection*), and 10 (*indemnity*) of these Protective Provisions which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of ESPL, the other provisions of these Protective Provisions do not apply to apparatus in respect of which the relations between the undertaker and ESPL are regulated by the provisions of Part 3 of the 1991 Act.

Protective works to buildings

4. The undertaker, in the case of the powers conferred by article 19 (*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 ESPL.

Acquisition of land

5. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not —

(a) appropriate or acquire or take temporary possession of any land or apparatus owned or leased by ESPL or forming part of the ESPL Project; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, interest or right and/or apparatus of ESPL,

otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

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

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

(4) Any agreement or consent granted by ESPL under paragraph 8 (*retained apparatus: protection*) or any other paragraph of these Protective Provisions is not to be taken to constitute agreement under sub-paragraph (1) and any agreement under sub-paragraph (1) is without prejudice to and does not affect any other rights of ESPL except the land or apparatus to the agreement it relates.

Retained Apparatus

6. (1) Except as may be otherwise agreed between the undertaker and ESPL and subject to sub-paragraph (2), the undertaker must not execute any specified works on land acquired or held by ESPL or land in which ESPL has any right or interest, until the undertaker has submitted to ESPL a plan of the works to be executed and ESPL has either given its approval to those plans or the period of 56 days beginning with the date on which such plans are submitted to ESPL has expired without ESPL having given its approval, unless ESPL has requested further particulars from the undertaker as ESPL may reasonably require and such particulars have not yet been provided by the undertaker.

(2) The undertaker may commence specified works which are emergency works as soon as reasonably practicable after giving notice to ESPL and may execute those works without plans having been submitted under sub-paragraph (1), but the undertaker must (if so reasonably required by ESPL) submit such plans to ESPL as soon as reasonably practicable after commencing such emergency works.

(3) In the execution of specified works for which plans have been submitted to ESPL pursuant to this paragraph the undertaker must carry out the specified works only in accordance those plans as approved (or not rejected) by ESPL with such modifications as ESPL may direct so as to ensure the safety and efficient operation of the apparatus and the continuity of supply.

(4) In carrying out any specified works pursuant to sub-paragraph (3), the undertaker must at all times comply with any code of practice issued by ESPL and must give ESPL reasonable facilities to monitor and inspect such works.

(5) The undertaker must take all steps reasonably required by ESPL to protect ESPL's apparatus from damage, interference or loss of efficiency during and after the construction of the specified works.

(6) The undertaker must, in carrying out any specified works, at all times ensure: (a) that the specified works do not adversely affect the transmission capacity, efficiency or reliability of the ESPL Grid Connection or the apparatus; (b) that the specified works maintain adequate offset distances from ESPL's apparatus as required to prevent electromagnetic interference, thermal effects or physical damage; and (c) that the specification and programme for the specified works are submitted to and approved by ESPL before the commencement of any specified works.

(7) Any approval of ESPL 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 and no comment or response has been issued by ESPL within 28 days of the submission of the plans for approval (or submission of further particulars if required by ESPL); and

(c) may be given subject to such reasonable requirements as ESPL may make for the protection of their apparatus in consideration of the requirements set out in sub-paragraph (6).

(8) The further particulars set out in sub-paragraph (1) include information relating to management of construction traffic, access and egress arrangements, offset distances, protective works required to avoid EMI and physical damage.

(9) In the event that the final design of the undertaker's grid connection into the Eaton Socon Substation results in any works crossing or being within 10 metres of ESPL's apparatus, if ESPL is not satisfied with the information provided by the undertaker, ESPL may require the undertaker to commission and share with ESPL an independent engineering assessment of the impacts on the apparatus. The undertaker shall implement such mitigation measures as ESPL may reasonably require to protect the performance and longevity of the apparatus.

Removal of apparatus

7. (1) No apparatus shall be removed and no right to remove it shall arise, unless the undertaker has first given to ESPL 56 days' written notice of its intention to remove the apparatus and such removal and provision of alternative apparatus has been approved by ESPL within those 56 days.

(2) Where ESPL approves the works for removal of the apparatus and provision of alternative apparatus, the undertaker shall undertake the approved works. Upon completion of construction of the alternative apparatus, the undertaker shall secure, transfer and afford to ESPL all facilities and rights in land for the use, maintenance, construction and protection of the alternative apparatus. Those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and ESPL within 28 days of the undertaker proposing terms and conditions to ESPL and must be no less favourable on the whole to ESPL than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by ESPL.

(3) 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 considered by ESPL to be less favourable on the whole to ESPL those enjoyed by it in respect of the apparatus to be removed, the matter may be referred to arbitration in accordance with paragraph 14 for the arbitrator to determine any appropriate remedy to secure for ESPL facilities and rights in the alternative apparatus no less favourable than those enjoyed by ESPL in the apparatus to be removed .

(3) Any alternative apparatus to be constructed or installed by the undertaker pursuant to the approval of ESPL under sub-paragraph 1 must be constructed or installed before the apparatus that is to be replaced is removed, unless ESPL and the undertaker otherwise agree.

(4) Nothing in this paragraph requires the undertaker to bear or pay the cost of any alternative apparatus that is not reasonably necessary as a consequence of the exercise of the provisions of these Protective Provisions or the powers under the Order.

Expenses

9. (1) Subject to the following provisions of this paragraph, the undertaker must pay to ESPL within 30 days of an invoice or claim the reasonable and proper costs, charges and expenses of and 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 ESPL in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;
- (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;
- (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; and
- (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) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 14 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to ESPL 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.

(3) For the purposes of sub-paragraph (2)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or similar will be treated as if it also had been agreed or had been so determined.

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

(5) Any sums paid by the undertaker to ESPL under sub-paragraph (1) relating to anticipated costs and expenses will be returned on demand (in whole or in part as applicable) by ESPL to the undertaker if not incurred.

Indemnity

10. (1) If, in consequence of the construction of any works authorised by these Protective Provisions 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under these Protective Provisions 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 ESPL, or there is any interruption in any service provided, or in the supply of any goods, by ESPL, or ESPL becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay within 30 days of receipt of an invoice or claim from ESPL the cost reasonably and properly incurred by ESPL in making good such damage or restoring the supply; and

(b) indemnify ESPL for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from ESPL, by reason or in consequence of any such damage or interruption or ESPL becoming liable to any third party.

(2) The fact that any act or thing may have been done by ESPL on behalf of the undertaker or in accordance with a plan approved by ESPL or in accordance with any requirement of ESPL as a consequence of the authorised works or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless ESPL fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

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

(a) any damage or interruption to the extent that it is attributable to the neglect or default of ESPL, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by these Protective Provisions carried out by ESPL as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 5 (*Benefit of 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 sub-paragraph (3)(b) will be subject to the full terms of these Protective Provisions including this paragraph 10; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) ESPL 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 (such representations not to be unreasonably withheld or delayed).

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

(7) The undertaker must not commence construction of any specified works (and must not permit the commencement of construction of any specified works) unless and until ESPL is satisfied acting reasonably that the undertaker has first provided Acceptable Insurance (and provided evidence that it shall maintain such Acceptable Insurance for the entire construction period of the relevant part of the specified works from the proposed date of commencement) and ESPL has confirmed its satisfaction in writing.

(8) Where the undertaker’s contractor has provided the Acceptable Insurance, the undertaker shall remain responsible for ensuring that the Acceptable Insurance is in place and maintained as required under the terms of these Protective Provisions.

Enactments and agreements

11. Save to the extent provided for to the contrary elsewhere in these Protective Provisions or by agreement in writing between ESPL and the undertaker, nothing in these Protective Provisions affects the provisions of any enactment or agreement regulating the relations between the undertaker and ESPL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

12. (1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or ESPL requires the removal of apparatus under paragraph 6(2) (*removal of apparatus*) or ESPL makes requirements for the protection or alteration of apparatus under paragraph 8 (*retained apparatus: protection*), the undertaker must use its reasonable endeavours to co-ordinate the execution of any works (which are subject to these Protective Provisions) 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 ESPL's undertaking and ESPL must use its reasonable endeavours to co-operate with the undertaker for that purpose.

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

Access

13. If in consequence of the agreement reached in accordance with paragraph 5(1) (*acquisition of land*) 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 ESPL to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. (1) Subject to sub-paragraph (2), any difference or dispute arising between the undertaker and ESPL under these Protective Provisions must, unless otherwise agreed in writing between the undertaker and ESPL, be determined by arbitration in accordance with article 43 (*arbitration*) of the Order.

(2) Sub-paragraph (1) does not apply to a difference or dispute arising under sub-paragraphs 6(1) or 7(1)

Notices

15. Notwithstanding article 40 (*service of notices*), any plans submitted to ESPL by the undertaker pursuant to paragraph 5 (*acquisition of land*) must be submitted to ESPL at its registered office or to such other address as ESPL may from time to time appoint instead for that purpose and notify to the undertaker in writing.