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11 September 2026

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Application Reference: EN010141

Applicant response to the Examining Authority's request for further information

I write on behalf of BSSL Cambsbed 1 Ltd (the 'Applicant') in response to the request for further information **[PD-013]** dated 27 August 2026 and made by the Examining Authority (ExA) under rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (the Rule 17 Letter).

The request for further information included in the Rule 17 Letter relates to agreed and requested Protective Provisions or side agreements with a number of Affected Parties. The Rule 17 Letter is addressed to those Affected Parties and not to the Applicant. Nonetheless, the Applicant considers it would assist the Examining Authority to be made aware of the current status of discussions with each of the relevant parties and has therefore set out its position below.

The ExA's request acknowledges progress made with certain parties and seeks further information from others with whom discussions remain ongoing. The Applicant provides an update below in respect of the following parties referenced in the ExA's request:

1. Anglian Water Services Limited;
2. Environment Agency;
3. Eaton Socon Power Ltd

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4. National Gas Transmission plc
 5. National Grid Electricity Transmission plc;
 6. Eastern Power Networks plc;
 7. RWE Generation UK plc;
 8. Highways Authorities (Bedford Borough Council and Cambridgeshire County Council);
 9. PS Manor Park Solar Ltd;
 10. Vodafone Limited;
 11. EU Networks Fiber UK Limited; and
 12. Gigaclear Ltd;
 13. Lead Local Flood Authority.

1. Anglian Water Services Limited

The Applicant and Anglian Water Services Limited have agreed bespoke protective provisions which were included in the draft DCO submitted at Deadline 6 **[REP6-006]**. Anglian Water withdrew its objection to the Scheme by way of a statement submitted to the Examining Authority dated 2 September 2026.

2. Environment Agency

The Applicant understands that agreement has been reached with the Environment Agency on all matters set out in the Environment Agency's relevant representation **[RR-367]** and a Statement of Common Ground has been signed, the final version being submitted at this Deadline 8 This is confirmed in the representation submitted by the Environment Agency at Deadline 7 **[REP7-011]**.

3. Eaton Socon Power Ltd (“ESPL”)

The Applicant has continued to attempt to engage with Eaton Socon Power Limited in an effort to reach agreement and has attended several meetings since Deadline 5. The Applicant has not been able to reach agreement with this party. At Deadline 5, the Applicant submitted a representation into examination entitled “Applicant Response to Eaton Socon Power Limited” [REP5-024]. In this document the Applicant addressed how the Part 1 protective provisions addressed ESPL’s concerns set out in their relevant representation [RR-329]. ESPL responded to this at Deadline 6 [REP6-072] setting out why they consider Part 1 protective provisions to be insufficient. The Applicant provided further justification at Deadline 7 [REP7-008] for the Part 1 provisions.

The Applicant continues to be of the position that a bespoke set of protective provisions is not required to address the concerns raised by ESPL in their relevant representation. As such, the Applicant’s submission at Deadline 5 [REP5-024] remains true to the Applicant’s preferred position. However, in order to assist the ExA in their assessment of the relative merits of the positions of the parties the Applicant has provided a without prejudice set of protective provisions which has been drafted on the basis of the set of protective provisions which ESPL provided in the DCO at Deadline 6. The Applicant has not included these provisions in the draft DCO as its position remains as set out in Deadline 5, but it is hoped that this **without prejudice** set of provisions will aid the deliberations of the ExA at Appendix 1. The Applicant has provided a number of amendments to the ESPL protective provisions. The Applicant has provided justification for these amendments at Appendix 2 of this letter. The Applicant has also provided justification against the relevant representation of ESPL in Appendix 3, which demonstrates that the Applicant’s **without prejudice** set of provisions substantially provides for the requested level of protection as set out in ESPL’s relevant representation.

4. National Gas Transmission plc

The Applicant and National Gas Transmission plc (“National Gas”) have been engaged throughout the Examination regarding bespoke protective provisions for the protection of National Gas’ apparatus and interests.

The Applicant has included bespoke protective provisions for the protection of National Gas at Part 4 of Schedule 13 to the draft DCO **[as updated alongside this submission]**. These protective provisions reflect the preferred drafting of the Applicant rather than the preferred drafting of National Gas. The Applicant's position in respect of these protective provisions is set in its response to the Deadline 3 submission made by National Gas **[REP4-115]**.

While the bespoke protective provisions included in the draft DCO **[as updated alongside this submission]** are not currently agreed, the Applicant will continue to engage with National Gas and it is hoped that agreement can be reached in due course. If this is the case, the Applicant will write to the Examining Authority and/or Secretary of State (as appropriate) with a further update.

5. National Grid Electricity Transmissions

The Applicant and National Grid Electricity Transmission plc (NGET) have been engaged in active discussions regarding bespoke protective provisions for the protection of NGET's apparatus and interests. The Applicant has updated the draft DCO **[as updated alongside this submission]** to incorporate a form of bespoke protective provisions that have been agreed between the Applicant and NGET. The Applicant and NGET have agreed an updated Statement of Common Ground **[as updated alongside this submission]** to reflect this position. It is also understood that NGET has formally withdrawn its objection to the Scheme.

6. Eastern Power Networks plc

The Applicant and Eastern Power Networks (EPN) have been actively engaged regarding the terms of a side agreement. Subject to the parties entering into that side agreement, the Applicant understands that Eastern Power Networks will not require any further wording to be included in the final DCO. The Applicant and EPN have agreed the final form of this side agreement which the Applicant has executed and is in the process of being signed by EPN. The Applicant is hopeful that EPN will update the ExA in due course and withdraw their objection.

7. RWE Generation UK plc

The Applicant notes that the Examining Authority has requested RWE's final suggested protective provisions. In that context, the Applicant considers it helpful to provide a brief update on the current status of discussions with RWE.

RWE Generation UK plc (RWE) submitted a relevant representation **[RR-1116]** to which the Applicant responded in the document titled 'Applicant Responses to Relevant Representations - Host Authorities, Statutory Environmental Bodies, and Other Interested Parties' **[REP1-055]**.

Following submission of **[REP1-055]**, the Applicant sought to engage directly with RWE regarding the matters raised. Regrettably, despite the Applicant's efforts to initiate dialogue at the earliest opportunity, it was not until recently that RWE responded and substantive discussions between the parties commenced.

Those discussions have been constructive and have focused on considering RWE's concerns and whether appropriate arrangements can be agreed between the parties.

The Applicant maintains the position set out in Section 4.4 of its response to RWE's relevant representation **[REP1-055]**. Without prejudice to that position, the Applicant remains willing to discuss a commercial agreement or other appropriate arrangements to address RWE's requests, where reasonable and practicable to do so. However, in order to safeguard the Applicant's position should the Secretary of State determine that bespoke protective provisions for RWE are required, the Applicant has prepared a set of bespoke protective provisions that are submitted on a without prejudice basis. These bespoke protective provisions can be found at Appendix 5 of this document.

The Applicant remains committed to continued engagement with RWE and will update the Examining Authority as appropriate should any agreed position or relevant outcome arise from those discussions.

8. Highways Authorities (Bedford Borough Council and Cambridgeshire County Council)

The Applicant notes the Examining Authority's request that Bedford Borough Council and Cambridgeshire County Council submit their final suggested protective provisions. The Applicant understands that the Host Authorities' request for bespoke protective provisions relates to their role as local highway authorities for the Order limits.

The Applicant and the Host Authorities are in active discussions regarding a side agreement to manage the interaction between the DCO and the Host Authorities in their role as local highway authorities. The Applicant considers that side agreement has been agreed in its final form but final signoff from the Host Authorities is underway. The Applicant is confident that this side agreement will be signed and executed shortly after the end of Examination.

The Applicant understands that the Host Authorities intend to submit bespoke protective provisions in order to protect their position before the close of Examination.

The Applicant has previously explained its position in relation to this matter in response to submissions CCC-RR-24 to CCC-RR-28 in the Applicant's Response to Relevant Representations - Host Authorities, Statutory Environmental Bodies and Other Interested Parties **[REP1-055]**. The Applicant maintains that it is not appropriate to include protective provisions for the protection of the local highway authorities in the draft DCO given the existing measures that are built into the draft DCO and the management plans, whereby highways and streets authorities must be consulted prior to any powers conferred within the DCO being exercised.

While the Applicant has not seen the Host Authorities proposed bespoke protective provisions, the Host Authorities have previously suggested that the Cambridge Waste Water Treatment Plant Relocation Order 2025 could be used as a basis for their protective provisions (see the Summary of outstanding matters on the draft DCO between the Host Authorities and the Applicant **[REP6-053]**). The Applicant's position is that these protective provisions would not be appropriate for this Scheme given the much more limited interaction between this Scheme and the local highway network when compared to the suite of works that were permitted by the Cambridge Waste Water Treatment Plant Relocation Order 2025.

Nonetheless, the Applicant understands that the Secretary of State may determine that it is necessary to include protective provisions for the benefit of the local highway authorities within the final DCO. In order to prepare for this eventuality, the Applicant has prepared a set of bespoke protective provisions that can be found at Appendix 4 of this document for the protection of the local highway authorities. These protective provisions are submitted on a **without prejudice** basis and reflect the form of protective provisions that the Applicant would consider to be reasonable and proportionate if it is considered necessary to give the Host Authorities additional oversight over the design and construction processes of any highway works. The Applicant has not included these protective provisions within the draft DCO **[as updated alongside this submission]** as the Applicant does not consider it is necessary to incorporate such additional measures into the DCO for the reasons set out above.

The Applicant will continue to engage with the Host Authorities and it is hoped that agreement can be reached in due course. If this is the case, the Applicant will write to the Examining Authority and/or Secretary of State (as appropriate) with a further update.

9. PS Manor Farm Solar Ltd

The Applicant has reviewed the Rule 17 letter dated 27 August 2026 **[PD-013]**. The Applicant is greatly concerned that the ExA appear to have accepted the position that PS Manor Farm Limited must be protected by way of protective provisions and has requested for bespoke protective provisions to be provided by PS Manor Farm Limited. The Applicant considers that this is an incorrect basis on which to assess the position of PS Manor Farm Limited. The Applicant has inferred this position by the statement included in the Rule 17 letter that the ExA will “assume that [PS Manor Farm Limited] are happy with the standard Protective Provisions and wording in the dDCO”.

To be clear, the ExA should not continue on the basis of assuming that the standard protective provisions would deal with PS Manor Farm Limited asserted concerns.

The standard protective provisions only apply to those bodies which satisfy the definition of “utility undertaker” in Part 1. For any electricity undertaker, that party would need to be the holder of a licence under the 1989 Act. PS Manor Farm Limited has failed to adduce any

evidence that would indicate that it is a licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act. On this basis, the ExA should not assume that Part 1 would apply to PS Manor Farm Limited.

The fact that PS Manor Farm Limited have failed to provide evidence that they would satisfy the definition of “utility undertaker” does not present an issue for determination of the Order by the Secretary of State. This is because PS Manor Farm Limited do not need to be held to the Part 1 protective provisions. The Applicant considers that PS Manor Farm Limited do not need to be held to the Part 1 protective provisions because PS Manor Farm Limited has also failed to demonstrate within the examination through the provision of documentary evidence that it is a statutory undertaker within the meaning of section 127 Planning Act 2008 or section 138 Planning Act 2008. The Applicant has undertaken due diligence and cannot locate any documentary evidence which would indicate that it is a holder of any such licence that would provide it with the status of a statutory undertaker. On this basis the statutory tests set out in those provisions would appear not to apply to this party. If they do not apply, then the Secretary of State’s consideration of the relative impact on this party should be equivalent to that of any other affected party. The Secretary of State should not apply the higher tests of “serious detriment” reserved only for statutory undertakers.

The Applicant appreciates that the request from the ExA for PS Manor Farm Limited to provide their bespoke provision is a reasonable request in the context of the ExA’s inquisitorial role. However, the Applicant does not agree with any assumption that such protective provisions are warranted for a party with PS Manor Farm Limited’s status. To reiterate, PS Manor Farm Limited have not adduced any evidence that they are a statutory undertaker. Protective provisions are primarily included in a DCO to cover the interests of affected statutory undertakers. The Planning Inspectorate set out this concept in the Planning Act 2008: Guidance on preparing an application: Part 3 - Contents of a draft Development Consent Order at paragraph 3.4. At paragraph 4.23 of that Guidance, it states that protective provisions are recommended to be included where the proposed development *interacts with the land and apparatus owned and/or operated by statutory undertakers and other parties*. In relation to other parties, the Planning Inspectorate list *Network Rail, National Highways, Environment Agency, local authorities and drainage authorities*. At no point in Guidance is there an expectation that protective provisions be included in an Order for the benefit of private commercial parties who have not proven they

meet the threshold requirements of a statutory undertaker. This is not to say that protective provisions cannot be used for private commercial entities which are not statutory undertakers, but it would be in the Applicant's own discretion as to whether the interaction with that private commercial entity would benefit from such additional control. There is no separate legal test driving at its inclusion. In this case, the interaction with PS Manor Farm Limited does not warrant any such level of protection.

The Applicant considers that the limited interaction that does occur between the Scheme and the land or apparatus of PS Manor Farm Limited would be adequately dealt with by way of compensation measures, secured through the principles of the Compensation Code. There does not need to be a set of provisions that restrict the Applicant's ability to exercise its compulsory acquisition rights or ability to build the Scheme.

It should also be noted that PS Manor Farm Limited have at no point demonstrated how the Applicant's intended compulsory acquisition would result in any detriment that would require the provision of protective provisions. In relation to plots 2-2, 2-3, 3-7, and 3-8, it is acknowledged that there is a restrictive covenant in place over this land that prevents other energy projects from building in a defined buffer zone. The Applicant does not consider that PS Manor Farm Limited has adduced any evidence that would provide guidance as to how the removal of that restrictive covenant would result in a detriment to the operation of PS Manor Farm's assets. Regardless, upon the Applicant extinguishing the restrictive covenant, a compensation event may occur. Compensation may then be owed to PS Manor Farm Limited to the extent that they are able to demonstrate any loss attributable to the precise nature of the rights acquired by the Applicant in that instance.

In relation to plots 3-1, 3-2, and 3-3, where the Applicant is seeking rights to install cables within a road forming part of the leasehold demise of PS Manor Farm Limited. It should be noted that the Applicant has already agreed an option for lease over these plots, as set out in the Land and Rights Negotiation Tracker. The Applicant consider that the acquisition for laying cabling within this land should be treated on the same basis as any other land within the order. The acquisition of rights may generate a compensation event and to the extent that the exercise of those rights would have a measurable impact on operations of PS Manor Farm's assets, then the compensation code would address that issue and would be calculated in view of the precise rights acquired at that time.

The operation of protective provisions is primarily focussed on addressing a situation where an Order would grant an undertaker the ability to carry out works which would impact the apparatus of a statutory undertaker. Regardless of the fact that PS Manor Farm Limited have not demonstrated that they are a statutory undertaker, protective provisions would be entirely inappropriate to address the highly limited interaction between the two parties. The interaction between the parties does not result in any physical interaction between the solar generating apparatus of PS Manor Farm Limited and the East Park Scheme. Rather, the majority of the interaction is over land where PS Manor Farm Limited have expressly secured restrictive covenants ensuring the absence of apparatus. The only actual element of interaction is in relation to an access track. The Applicant's proposals to install cabling in this access track would not require protective provisions, as such provisions would not ordinarily address the detailed arrangements for the shared use of access tracks. Rather, any such acquisition of rights would be subject to discussion at the time through voluntary measures as to what collaboration principles should be entered into, and if none then the compensation payable in respect to any acquisition of land rights would reflect the nature of the loss experienced by the respective parties.

In relation to whether the Applicant's installation of apparatus in land benefiting from a restrictive covenant in favour of PS Manor Farm Limited restricting the development of solar apparatus, PS Manor Farm Limited have failed to provide any evidence that would prove or otherwise indicate that the installation of the Applicant's scheme would result in any physical impact to PS Manor Farm's Scheme. Simply because the Applicant would require the removal of a restrictive covenant does not mean that the restrictive covenant in place was necessary for the protection of PS Manor Farm Limited's apparatus. Equally, the close siting of two solar farms is a common practice in the industry and has no effect on the efficient and safe operation of either. The Applicant does not consider that asset protection agreements or protective provisions are mandatory to ensure no impact to PS Manor Farm Limited's apparatus. The Applicant will be building on separate land, and at a distance where any impact is unlikely.

The Applicant would also like to address the principles of fairness which should be applied to all proceedings within the examination. PS Manor Farm Limited have not at the time of this submission, being the last deadline of the examination, provided any protective provisions into the examination for consideration by the ExA, the Applicant or the public.

This removes the ability for the Applicant to review and comment on those protective provisions within the examination and provide a response to the ExA on its position. This is a clear breach of the principles of fairness, as it would result in a situation where an Applicant for a DCO is left – through the procedural decisions of an Examining Authority – in a situation where they have not been afforded the opportunity to address evidence against them.

It should be noted that in H2Teeside (EN070009), the Examining Authority's Report contained a similar scenario which stated at paragraph 6.7.48 that *"All IPs were asked throughout the examination to provide the ExA with its preferred form of PPs in the eventuality that we may need to decide which version to include in our rDCO. BOC did not do this until the last day of the examination, consequently the applicant has not had the opportunity to give us its response to BOCs PPs. Therefore, we consider that due to principles of fairness in the examination, we cannot consider BOCs preferred version of PPs"*.

In this case, the Applicant has demonstrated in its response to the Rule 17 letter dated 20th August **[REP7-007]** that PS Manor Farm Limited had been given proper notification of the examination and it is through their own conduct that their engagement in examination has been late, and necessitated the fact that the Examining Authority had to request protective provisions to be provided at the final deadline. The Applicant appreciates that PS Manor Farm Limited are an affected party with a right to be heard. However, the Applicant also considers that the late submissions of PS Manor Farm Limited are in clear contravention to the procedural norms of examination and that expectations to procedural fairness run bilaterally. The Applicant considers that regardless of whether it was necessary for the ExA to request provisions from PS Manor Farm Limited in order for the ExA to consider those protective provisions, that those provisions cannot be considered for inclusion within the Order on the basis of the principles of fairness due to the fact that PS Manor Farm Limited have not submitted those provisions with sufficient punctuality to allow for proper and reasoned consideration within the statutory timeframe of examination.

If the Secretary of State considers that there is some element of the Applicant's scheme that requires protective provisions to be in place for the benefit of PS Manor Farm Limited, then the Applicant would consider that the most proportionate and reasonable position

would be to apply the Part 1 protective provisions specifically to PS Manor Farm Limited. These provisions have been in examination since submission, and are for the benefit of all statutory undertakers apart from those who have requested bespoke provisions. Given PS Manor Farm Limited are not a statutory undertaker, then the Applicant's view is that if they are to benefit from any protective provisions it should be on the basis of these standard terms, and not any level of enhanced, un-considered, terms that have not been interrogated and justified within examination. The Part 1 provisions are highly standardised provisions which are clearly suitable to mitigate the impacts against statutory undertakers, or otherwise they would not be used in almost every development consent order granted. They are therefore the most appropriate set to use if the Secretary of State does not consider that the position of not providing any protective provisions to be reasonable. The Applicant would suggest that Part 1 could be applied to PS Manor Farm Limited through the amendment of the definition of "utility undertaker" to specifically apply to this party.

Irrespective of the above, the Applicant acknowledges that it was provided with a set of bespoke protective provisions on the 9th September, two days before this Deadline 8. PS Manor Farm then provided revised protective provisions to the Applicant at 12.03pm on the 11th September 2026, being the day of Deadline 8 leaving the Applicant with highly limited time to review ahead of submission of its deadline documents which by that time had already been substantially prepared. During this period the Applicant did provide heads of terms for a co-operation agreement to PS Manor Farm Limited, on the 9th September 2026, but has not received any response from PS Manor Farm Limited on the nature of those heads of terms. The Applicant has not been afforded adequate time to properly consider the protective provisions provided at 12.03pm on this date. In the time available to the Applicant, the Applicant can see that the provision sought are unreasonable and disproportionate considering the nature of the evidence provided by PS Manor Farm Limited to date regarding their status, and perceived impact from the Scheme.

The protective provisions look to bind the Applicant in provided a £20,000,000 (twenty million pounds) third party liability insurance policy. No explanation or justification has been provided for why the Applicant's interface with PS Manor Farm Limited, which per the above is highly limited, would warrant such level of cover. PS Manor Farm Limited have also provided a term requiring **not only** the provision of the above unjustified insurance policy, but also the requirement to maintain "acceptable security" being a parent company

guarantee of £20,000,000 (twenty million pounds) or a bank bond of £15,000,000 (Fifteen Million Pounds) per asset per event up to a total liability cap of £20,000,000 (Twenty Million Pounds). This would be extremely onerous for the Applicant to provide. A provision requiring security and insurance is typically only used in cases where there is substantial and significant interface between two projects, and where those projects would have an enhanced public safety concern should damage be caused to infrastructure, such as gas, railways, or major highways. PS Manor Farm Limited have at no point in examination provided any evidence to demonstrate why insurance and security provision of this value are necessary to protect their apparatus from the highly limited interaction with the Applicant's Scheme.

It should also be noted that the protective provisions by PS Manor Farm in relation to the acquisition of land does not contain restraints over the exercise of their discretion to withhold consent, with the protective provisions missing key controls that ensure withholding approval can only be done where doing so is reasonable.

The Applicant must make clear that the above comments do not constitute a full appraisal of the protective provisions of PS Manor Farm Limited. It has been unable, given the lateness with which these were provided, to assess these in any true detail. The above comments do, however, seek to communicate to the Examining Authority that the Applicant has read enough of these protective provisions to see that they are highly onerous, and that no supporting evidence has been provided to justify such drafting. As above, if the Secretary of State is minded to provide some level of protection for PS Manor Farm Limited then the Applicant is of the strong view that the most appropriate set of provisions to be provided is the Part 1 provisions which have been in examination since submission and will have been available for PS Manor Farm Limited to review since their receipt of statutory notices.

10. Vodafone Limited

The Applicant and Vodafone Limited have agreed a side agreement. The Applicant understands that Vodafone's concerns have been resolved and that no outstanding matters remain between the parties.

11. EU Networks Fiber UK Limited

As detailed in the Land and Rights Negotiations **Tracker [as updated alongside this submission]** the Applicant has not received a request for bespoke protective provisions from EUNetworks Fiber UK Limited to date.

The Applicant has included generic protective provisions for the benefit of telecommunications undertakers at Part 2 of Schedule 13 to the draft DCO **[as updated alongside this submission]** and considers that these generic protective provisions will provide adequate protection for EUNetworks Fiber UK Limited and ensure that there will be no serious detriment to their undertaking.

12. Gigaclear Ltd

As detailed in the Land and Rights Negotiations Tracker **[as updated alongside this submission]** the Applicant has not received a request for bespoke protective provisions from Gigaclear Ltd to date.

The Applicant has included generic protective provisions for the benefit of telecommunications undertakers at Part 2 of Schedule 13 to the draft **DCO [as updated alongside this submission]** and considers that these generic protective provisions will provide adequate protection for Gigaclear Ltd and ensure that there will be no serious detriment to their undertaking.

13. Lead local flood authorities (Bedford Borough Council and Cambridgeshire County Council)

The Applicant understands that the protective provisions included for the protection of the lead local flood authorities has been agreed by both authorities. Please see Item 06 of the Statement of Common Ground with Bedford Borough Council **[as updated alongside this submission]** and Item 06 of the Statement of Common Ground with Cambridgeshire County Council **[as updated alongside this submission]** for reference.

On the basis that protective provisions have been agreed with the lead local flood authorities, and as noted above the Applicant is not seeking to compulsorily acquire any

rights from the Host Authorities, it is not considered that the compulsory acquisition powers contained in the draft DCO would have any serious detriment to the lead local flood authorities.

We trust that the responses contained in this letter and the associated documents cited in the letter assist the Planning Inspectorate and the Examining Authority in their consideration of these issues.

Please do not hesitate to contact us or the undersigned representative of the Applicant if you have any questions or require any further information regarding these issues. We would be happy to assist the Planning Inspectorate in any way necessary.

Yours sincerely,

Nicholas Andrews

DCO Project Manager on behalf of BSSL Cambsbed 1 Limited

A handwritten signature in black ink, appearing to read 'N. Andrews', with a stylized, cursive script.

Appendix 1

Applicant's without prejudice protective provisions for Eaton Socon Power Limited

PROTECTIVE PROVISIONS

FOR THE PROTECTION OF EATON SOCON POWER LIMITED

Application

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

Interpretation

2. In this Part of this Schedule —

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

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group; 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 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;

"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;

"access track" means the access track within land plot 14-9 as shown in the land plan;

"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 this Part of this Schedule 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 provided at all times that any such apparatus must belong to or be maintained by ESPL for the purposes of the ESPL project only;

"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 this Part 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;

"cable easement option" means the option agreement dated 30 July 2024 (as varied on 13 June 2025) giving ESPL a right to call for a deed of grant for a cable easement between the south eastern area of the main site land and the Eaton Socon substation;

"commence" and **"commencement"** in this Part of this Schedule includes any below ground surveys and associated monitoring, ground work operations or the erection of construction plant and equipment;

"East Park connection route" means the land in plots 14-2; 14-3; 14-4; 14-5, 14-6; 14-7; 14-8; 14-9; 14-10; 14-11; 14-12; 14-13; 14-14; 14-15; 14-16; 14-17; 14-18; 14-19; 14-20 as shown in the land plan;

"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;

"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;

"main site land" means the land that is the subject of the main site lease;

"main site lease" means the lease dated 21 August 2025 granted to ESPL in respect of the land upon which the solar panels, BESS and ancillary infrastructure is to be sited;

"maintain" and **"maintenance"** includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of ESPL: 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;

"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; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker;

On Street Apparatus

3. Except for paragraphs 6 (*retained apparatus*), and 9 (*indemnity*) of this Part 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 this Part 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, but subject to sub-paragraph (2) the undertaker may not, in the exercise of the powers of the Order—

(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, other interest or right and/or apparatus of ESPL,

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

(2) Sub-paragraph (1) does not apply where the undertaker wishes to exercise powers of compulsory acquisition of land or powers of temporary possession over the East Park connection route or the access track where such acquisition of temporary possession would be taken subject to any interest held by ESPL.

(3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the specified works (or in such other timeframe as may be agreed between ESPL and the undertaker) that is subject to the requirements of this Part 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.

(4) 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 this Part 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 this Part are to prevail.

(5) Any agreement or consent granted by ESPL under paragraph 6 (*retained apparatus*) or any other paragraph of this Part 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, 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 42 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 safe operation of the apparatus and the continuity of their supply.

(4) In carrying out any specified works pursuant to sub-paragraph (3), the undertaker must at all times comply with any applicable British Standard Code of Practice 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 (7).

(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.

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 42 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 42 days.

(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) 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.

(4) 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.

(5) 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.

(6) 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 this Part of this Schedule or the powers under the Order.

Expenses

8. (1) Subject to the following provisions of this paragraph, the undertaker must pay to ESPL the reasonable and proper costs, charges and expenses of and incidental to 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 specified works.

(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 13 (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

9. (1) If, in consequence of the construction of any works authorised by this Part 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 this Part 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 45 working 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) reimburse ESPL for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs reasonably and properly incurred by or recovered from ESPL, by reason or in consequence of any such damage or interruption.

(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 this Part 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 (*consent to transfer 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 this Part 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 unless and until ESPL is satisfied acting reasonably that the undertaker has first procured 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) and ESPL has confirmed its satisfaction in writing.

Enactments and agreements

10. Save to the extent provided for to the contrary elsewhere in this Part or by agreement in writing between ESPL and the undertaker, nothing in this Part 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

11. (1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or ESPL requires the removal of apparatus or ESPL makes requirements for the protection or alteration of apparatus under paragraph 6 (*retained apparatus*), the undertaker must use its reasonable endeavours to co-ordinate the execution of any works (which are subject to this Part) 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

12. 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

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

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.

Appendix 2

Comparison Table – Applicant' justification for changes introduced to Eaton Socon Power Limited's Protective Provisions

TABLE OF COMPARISON

APPLICANT'S JUSTIFICATION FOR CHANGES INTRODUCED TO THE ESPL PROTECTIVE PROVISIONS

Extract of Tracked Change Protective Provisions	Comments
Application	
1. (1) For the protection of ESPL as referred to in these Protective Provisions <u>this Part of this Schedule</u> the following provisions have effect, unless otherwise agreed in writing between the Undertaker and ESPL.	Amended to align with DCO SI Drafting.
Interpretation	
2. In these Protective Provisions <u>this Part of this Schedule</u> —	Amended to align with DCO SI Drafting.
<u>"1991 Act" means the New Roads and Street Works Act 1991;</u>	Amended to align with DCO SI Drafting.
"Acceptable Credit Provider" <u>"acceptable credit provider"</u> 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;	Amended to align with DCO SI Drafting.
"Acceptable Insurance" <u>"acceptable insurance"</u> 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 <u>acceptable credit provider</u> , such policy shall include (but without limitation): <u>(a)</u> -(a) a waiver of subrogation, and an indemnity to principal clause, in favour of ESPL; and <u>(b)</u> -(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;	Amended to align with ESPL's Protective Provisions paragraph 10(7) which confirms that insurance only required to be maintained for the construction period of the relevant part of the specified works. Otherwise, the definition contradicts this provision.
<u>"1991 Act" means the New Roads and Street Works Act 1991;</u>	Amended to align with DCO SI Drafting.
"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;	No change
<u>"access track" means the access track within land plot 14-9 as shown in the land plan;</u>	Required in relation to the additional stipulations set out in paragraph (5) below on the acquisition of land.
"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 <u>project</u> , together with any replacement apparatus and such other apparatus constructed pursuant to the Order <u>this Part of this Schedule</u> 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 <u>grid connection provided at all times that any such apparatus must belong to or be maintained by ESPL for the purposes of the ESPL project only;</u>	Additional wording added in to ensure that protective provisions apply to ESPL apparatus only. Wording added for the avoidance of doubt.
"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 <u>this Part</u> 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;	Amended to align with DCO SI Drafting.

"cable easement option" means the option agreement dated 30 July 2024 (as varied on 13 June 2025) giving ESPL a right to call for a deed of grant for a cable easement between the south eastern area of the main site land and the Eaton Socon substation;	Definition required to be added in due to "ESPL Grid Connection" definition using the term as per the ESPL Protective provisions.
"Commence commence " and "commencement" in these Protective Provisions this Part of this Schedule includes any below ground surveys and associated monitoring, ground work operations or the erection of construction plant and equipment;	Amended to align with DCO SI Drafting.
"East Park connection route" means the land in plots 14-2; 14-3; 14-4; 14-5, 14-6; 14-7; 14-8; 14-9; 14-10; 14-11; 14-12; 14-13; 14-14; 14-15; 14-16; 14-17; 14-18; 14-19; 14-20 as shown in the land plan;	Required in relation to the additional stipulations set out in paragraph (5) below on the acquisition of land.
"Eaton Socon Substationssubstation" means the National Grid electricity transmission substation at Eaton Socon, Bedfordshire;	Amended to align with DCO SI Drafting.
"ESPL" means Eaton Socon Power Limited (Company Registration Number 1 12921574) whose registered office is at Fourth Floor, Burlington Building, 19 Heddon Street, London, United Kingdom, W1B 4BG;	
"ESPL Grid Connectiongrid connection" means the cable connection from the ESPL Project project site to the Eaton Socon Substation substation in Bedfordshire, including any cable easement route for which ESPL holds the Cable Easement Option cable easement option and any associated access arrangements;	Amended to align with DCO SI Drafting.
"ESPL Planning Permissionsplanning 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;	Removed to ensure certainty of the development against which the protective provisions apply. If ESPL amend or vary their project to such a degree that the definition of ESPL project no longer applies, and they do this after the grant of the Order it is not for the undertaker of the Order to provide increased protection against this previously unconsented development.
"ESPL Projectproject" means the co-located 49.9MW solar park and 100MW battery energy storage system authorised by the ESPL Planning Permissions planning permissions , together with the ESPL Grid Connection grid connection , which will connect to the Eaton Socon Substation substation in Bedfordshire;	Amended to align with DCO SI Drafting.
"functions" includes powers and duties;	No change
"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;	No change
"main site land" means the land that is the subject of the main site lease;	Added in due to the reciprocal amendments caused by the need for the cable easement option definition.
"main site lease" means the lease dated 21 August 2025 granted to ESPL in respect of the land upon which the solar panels, BESS and ancillary infrastructure is to be sited;	Added in due to the reciprocal amendments caused by the need for the cable easement option definition.
"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;	Definition amended to apply personally to ESPL and not to the general ESPL Project. This is standard for protective provisions to ensure that the protections afforded by the DCO don't start applying to bodies which are not statutory undertakers.
"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;	No change
"Protective Provisions" means the provisions of this Part of this Schedule for the benefit of ESPL;	Definition not required due to DCO SI Drafting Amendments
"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	Wording removed as reference incorrect and not required regardless.

apparatus the removal of which has not been required by the <u>undertaker; and/or</u> 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;	Removed as wording not required. All relevant parts of Work No. 4 would be captured by (a) and (b). The test of relevance should be the quantitative elements of 10m or whether there is a known adverse potential. The additional “bolt on” for assurance for Work No. 4 “in the vicinity of the ESPL Grid Connection” does nothing but expand the definition of specified works unnecessarily and generate ambiguity as to what is meant by “in the vicinity”. The inference is the wording is that “in the vicinity” would capture works where there is no adverse effect, given that it is has been provided in addition to the overall protection given by (b). In short, the wording is either at best performative and misleading, or at worst unduly onerous - creating inherent obligations on BSSL without any justification of detriment on the part of ESPL.
"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;	Amended to align with DCO SI Drafting.
<u>On Street Apparatus</u> 3. Except for paragraphs 6 (retained apparatus; protection), and 109 (indemnity) of these Protective Provisions<u>this Part</u> 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<u>this Part</u> 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.	Amended to align with DCO SI Drafting.
<u>Protective works to buildings</u>	
4. The undertaker, in the case of the powers conferred by article 19 (<i>protective work to buildings</i>), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of ESPL.	No Change
<u>Acquisition of land</u>	
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, <u>but subject to sub-paragraph (2)</u> the undertaker may not, <u>in the exercise of the powers of the Order</u> — (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<u>project</u>; or (b) appropriate, acquire, extinguish, interfere with or override any easement, <u>other</u> interest or right and/or apparatus of ESPL, <u>;</u> otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).	Clarificatory wording added, to tie into new sub-paragraph (2) below.
<u>(2) Sub-paragraph (1) does not apply where the undertaker wishes to exercise powers of compulsory acquisition of land or powers of temporary possession over the East Park connection route or the access track where such acquisition of temporary possession would be taken subject to any interest held by ESPL.</u>	Additional wording inserted to relax the provision and provide reassurance that the exercise of powers can be done without ESPL consent only where such exercise does not function to interfere with the carrying on of the right of ESPL. On the basis of this drafting, ESPL only lose their ability to consent where there is no impact to ESPL. This wording continues to ensure that overall the Secretary of State can make a determination of the Order satisfied that the Order ensures that powers of compulsory acquisition can be exercised only without serious detriment to ESPL. This is because where any such acquisition would result in interference with ESPL's interests then the consent of ESPL is required, as per ESPL's original drafting.
5. (3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised<u>specified</u> 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<u>this Part</u> that will cause any conflict with or breach the terms of any easement or other legal or land interest of ESPL or affect the	Wording amended. Authorised works subject to the requirements of these Protective Provisions are specified works, therefore wording simplified.

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.	
5.(4) 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 this Part 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 this Part are to prevail.	Amended to align with DCO SI Drafting.
5. (5) Any agreement or consent granted by ESPL under paragraph 86 (<i>retained apparatus-protection</i>) or any other paragraph of these Protective Provisions this Part 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.	Amended to align with DCO SI Drafting.
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 42 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. 	Wording removed. Works approvals is only required to agree and regulate interaction between apparatus. It is not necessary for the Applicant to obtain the approval of design where the apparatus of the undertaker would only interact with ESPL land and not apparatus. In this case, that would see the undertaker of the Order having to obtain ESPL approval for works along the access route into the sub-station due to the fact that ESPL have a right of access. This is disproportionate to the impact of ESPL and not necessary to satisfy the tests of serious detriment given the protections of compulsory acquisition above. Equally, in relation to the ESPL RR, it is disproportionate that “all work details in relation to the grid corridor” are subject to ESPL approval. The Applicant considers that ESPL must accept this as their own protective provisions do not go this far. The approval of works should be firmly limited to ensure that the works of the undertaker under the Order do not affect the apparatus of the ESPL project, and the wording of the applicant secures this. Additionally, wording amended to align with standard 42 day periods.
6. (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.	No change
6. (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 safe operation of the apparatus and the continuity of their supply.	Wording amended to ensure that the undertaker is not held to “efficient” operation of ESPL apparatus which is too low a bar to be relevant to the statutory test of “serious detriment”. Any issues of efficiency would be a point of compensation and the Applicant should not be held to the amorphous nature of what is or not an impact of efficiency.
6. (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 applicable British Standard Code of Practice and must give ESPL reasonable facilities to monitor and inspect such works.	The Applicant has continued to request the code of practice from ESPL. ESPL have not provided any indication that any such code of practice is available for review. The Applicant cannot be expected to be held to codes of practices it has not seen and ESPL have not provided. The Applicant is happy to be held to any applicable British Standard Code of Practice which should be more than sufficient assurance for ESPL to ensure no serious detriment to their undertaking.
6. (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.	No change
6.(6) The undertaker must, in carrying out any specified works, at all times ensure: (a) (a) that the specified works do not adversely affect the transmission capacity, efficiency or reliability of the ESPL Grid Connection grid connection or the apparatus;	Amended to align with DCO SI Drafting.

<u>(b)</u> (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 <u>(c)</u> (c) that the specification and programme for the specified works are submitted to and approved by ESPL before the commencement of any specified works.	
6. (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 (67).	No change
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.	No change
6. (9) In the event that the final design of the undertaker's grid connection into the Eaton-Secon 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.	Removed on the basis that an independent engineering assessment is entirely disproportionate to the potential for disruption and damage between the projects. Independent engineering reviews are on occasion prudent steps where the infrastructure in question carries a material and significant public safety risk such as for railways, gas or major grid works. In this case, any such interactions will be in relation to two cables crossing. To the extent there is any disagreement between the parties as to the impact of the works, then ESPL would be able to refer the matter to arbitration to settle any dispute. This ability to go to arbitration means that the removal of this wording cannot be read as creating any risk of serious detriment to ESPL.
<u>Removal of apparatus</u>	
7. (1) No apparatus shall be removed and no right to remove it shall arise, unless the undertaker has first given to ESPL 56<u>42</u> 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<u>42</u> days.	Wording amended to align with standard 42 day periods.
7. <u>(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</u>	Wording inserted to permit emergency works where these are required. This is absolutely critical for safe construction and operation of the Scheme. The undertaker of the Order cannot be left in a situation where they are not able to access their apparatus and carry out emergency works without the consent of ESPL. This would result in a significant risk that they are left with no choice but to breach the terms of the protective provisions resulting in a criminal liability for the undertaker. This is not satisfactory and any prudent drafting should permit the undertaker the ability to carry out such emergency works without having to follow this approval process.
7. (3)<u>(2)</u> 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.	No change
7. (4)<u>(3)</u> 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.	Amended to align with DCO SI Drafting.
7.(5) Any alternative apparatus to be constructed or installed by the undertaker pursuant to the approval of ESPL under sub-paragraph <u>(1)</u> must be constructed or installed before the apparatus that is to be replaced	Minor formatting change

is removed, unless ESPL and the undertaker otherwise agree.	
7.(6) 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 this Part of this Schedule or the powers under the Order.	Amended to align with DCO SI Drafting.
Expenses	
8. 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 withincidental to 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 specified works. (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.	Wording simplified to provide a general expenses clauses for the proper and reasonable costs incurred by ESPL regarding the specified works.
8. (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 4413 (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.	Minor cross referencing change
8. (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.	No change

8. (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.	No change
8. (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.	No change
Indemnity	
<u>9. 10.</u> (1) If, in consequence of the construction of any works authorised by these Protective Provisionsthis Part 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 Provisionsthis Part 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— (c) bear and pay within 3045 working 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 (d) indemnifyreimburse ESPL for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs reasonably and properly 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.	9. (a) Amended to permit a realistic timeframe for settlement. 9. (b) Amended to ensure that costs which are unreasonably or improperly incurred are not included in the indemnity.
9. (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.	No change
9. (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 Provisionsthis Part 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 consent to (b) transfer 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 Provisionsthis Part 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.	Cross referencing and SI Drafting changes
9. (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).	No change
9. (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	No change

9. (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.	No change
9. (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 procured acceptable insurance (and provided evidence that it shall maintain such Acceptable Insurance 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.	Wording not required as first sub-clause of this paragraph already provides a restriction on commencement. Wording not necessary as it is already clear that insurance needs to be in place prior to commencement
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.	Undertaker will always be subject to (7) regardless of whether a contractor obtains the insurance. Therefore the provision of (8) is unnecessary.
<u>Enactments and agreements</u>	
10. 11. Save to the extent provided for to the contrary elsewhere in these Protective Provisions this Part or by agreement in writing between ESPL and the undertaker, nothing in these Protective Provisions this Part 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.	Amended to align with DCO SI Drafting.
<u>Co-operation</u>	
11. 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 86 (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 this Part) 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.	Amended to align with DCO SI Drafting.
11. (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.	No change
<u>Access</u>	
12. 13. If in consequence of the agreement reached in accordance with paragraph 5(1) (<i>acquisition of land</i>) 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.	No change
<u>Arbitration</u>	
13. 14. (1) Subject to sub-paragraph (2), any difference or dispute arising between the undertaker and ESPL under these Protective Provisions this Part must, unless otherwise agreed in writing between the undertaker and ESPL, be determined by arbitration in accordance with article 43 (<i>arbitration</i>) of the Order.	Amended to align with DCO SI Drafting.
13. (2) Sub-paragraph (1) does not apply to a difference or dispute arising under sub-paragraphs 6(1) or 7(1)	Removed on the basis that the proposed wording by ESPL would remove the ability to go to arbitration on fundamental matters relating to design of specified works, and the removal of apparatus. This would mean that in the event of dispute the parties would have to resolve issues through the courts. This is unacceptable and not to the benefit of efficient use of public resources. There is absolutely no statutory basis on which ESPL can

	assert that they have a right to unilaterally declare their approval to works being carried out or whether removal of apparatus is required. If works are required to be carried out or apparatus is removed, then these provisions function to mitigate the position of ESPL but should not be used as a way for ESPL to block the development of the authorised development granted permission pursuant to the Order. If there is a dispute between the parties it is an established provision of protective provisions that disputes go through an arbitration process and there is no clear reason for why that precedent should be diverted from in this instance.
Notices	
15. <u>14.</u> Notwithstanding article 40 (<i>service of notices</i>), any plans submitted to ESPL by the undertaker pursuant to paragraph 5 (<i>acquisition of land</i>) 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.	No change

Appendix 3

Applicant's consideration of its without prejudice protective provisions against those in Eaton Socon Power Limited's Relevant Representation

Table 1: Applicant's Consideration of Schedule 13, Part 6 of the DCO in relation to Section 127 of the 2008 Act

ESPL Relevant Representation	ESPL Proposed Protective Provisions	Applicant's Part 6 Protective Provisions	Commentary
The steps that must be taken by the Applicant are straightforward: it must remove all compulsory acquisition rights and temporary possession powers over the Overlap Land. If the land is not required, it should not be in the DCO. Accordingly, an amended version of the DCO should be submitted with the relevant plot numbers (as listed in the table above) 7 deleted in Schedule 9. The Applicant must also take steps to revise related documents including the Land Plans and Work Plans, in order to omit the Overlap Land. ESPL's interests should also be deleted from the Book of Reference. ESPL considers that this is entirely reasonable and justified given the wide grid connection corridor that the Applicant has retained, and taking into account the maturity of its adjacent ESPL Project, the limited area within grid connection corridor that it occupies, and the substantial threat that the East Park Project represents with respect to the timely and efficient construction, commissioning and operation of the ESPL Project. (paragraph 5.1, 5.2, 5.3) In the event that the land is retained within the draft DCO, that must be subject to a legally binding commitment that no rights to exercise powers of compulsory acquisition may be exercised over plots in which ESPL has an interest without ESPL's approval. That is imperative to safeguarding the ESPL Project. (paragraph 5.4)	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	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, <u>but subject to sub-paragraph (2) the undertaker may not, in the exercise of the powers of the Order—</u> (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<u>project</u>; or (b) appropriate, acquire, extinguish, interfere with or override any easement, <u>other</u> interest or right and/or apparatus of ESPL, otherwise than by agreement (such agreement not to be unreasonably withheld or delayed). <u>(2) Sub-paragraph (1) does not apply where the undertaker wishes to exercise powers of compulsory acquisition of land or powers of temporary possession over the East Park connection route or the access track where such acquisition of temporary possession would be taken subject to any interest held by ESPL.</u> (e) (2) <u>(3)</u> As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised<u>specified</u> 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<u>this Part</u> 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)<u>(2)</u> 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<u>this Part</u> 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	The Applicant has substantively adopted ESPL's position in relation to paragraph 5 of their proposed protective provisions. The Applicant has made some amendments which relate to ensuring that it does not need obtain the consent of ESPL to acquire interests in land, where it takes rights that are subject to ESPL's interests. The Applicant considers this a reasonable and rationale position. The Applicant considers that there is no reason to obtain the consent of ESPL where the acquisition proposed by the undertaker of the order would not affect ESPL's interests. The wording originally proposed by ESPL would see a situation where the undertaker of the order would have to obtain ESPL's consent to acquire rights in land where ESPL have an interest regardless of whether that acquisition would actually impact the ESPL project. In this way, the undertaker would have to obtain consent to acquire rights over access over the sub-station access road, even if any rights of access would be taken subject to ESPL's right of access. The wording in (2) continues to ensure that the Secretary of State can make a determination of the Order satisfied that the Order ensures that powers of compulsory acquisition can be exercised only without serious detriment to ESPL. This is because where any such acquisition would result in interference with ESPL's interests then the consent of ESPL is required, as per ESPL's original drafting.

	affect any other rights of ESPL except the land or apparatus to the agreement it relates.	upon by ESPL as of right or other use in relation to the apparatus, then the provisions in these Protective Provisions this Part are to prevail.	
That all works details in relation to the grid corridor for the East Park Project are submitted to and approved by ESPL in order to ensure that the ESPL Project is fully protected; (paragraph 5.5.1)	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.	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 42 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.	The Applicant has adopted the provisions of paragraphs 6 and 7 of the ESPL protective provisions subject to some amendments. A full justification of amendments is provided elsewhere. However, here the amendments are required to ensure that approval for works are not required where those works would not reach the relevant criteria of “specified works” which is set to capture works of the undertaker that would be relevant to the apparatus of ESPL. There is not a need to capture all “land acquire or held by ESPL” for the purpose of works approvals, as that would capture land held by ESPL which does not have apparatus of ESPL situated within it. In this case, that would see the undertaker of the Order having to obtain ESPL approval for works along the access route into the sub-station due to the fact that ESPL have a right of access. This is disproportionate to the impact of ESPL. Equally, in relation to the ESPL RR, it is disproportionate that “all work details in relation to the grid corridor” are subject to ESPL approval, which the Applicant considers that ESPL must acknowledge as their protective provisions do not go this far. The approval of works should be firmly limited to ensure that the works of the undertaker under the Order do not affect the apparatus of the ESPL project, and the wording of the applicant secures this.
The works details must include details of the nature and location of all works related to the grid connection and provide for 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; (paragraph 5.5.2)	6(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. 6(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.	(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 safe operation of the apparatus and the continuity of their supply. 6(6)The undertaker must, in carrying out any specified works, at all times ensure: (a) (a) that the specified works do not adversely affect the transmission capacity, efficiency or reliability of the ESPL Grid Connection grid connection or the apparatus; (b) (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) (c) that the specification and programme for the specified works are submitted to and approved by ESPL before the commencement of any specified works.	The Applicant has adopted ESPL’s wording, with small structural changes to ensure that the works details include details setting out adequate offset distances. The Applicant has made some amendments to ensure execution of works do not affect safety, but exclude efficiency, on the basis that efficiency would be a difficult term to quantify and that provided that continuity of supply is maintained the Applicant considers that the wording is sufficient to ensure no serious detriment is affected.

That the programme for the carrying out of the approved works details for the grid corridor for the East Park Project are submitted to and agreed with ESPL in order to avoid disruption to the construction and operation of the ESPL Project; (paragraph 5.5.3)	6(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.	6(6)The undertaker must, in carrying out any specified works, at all times ensure: <u>(d)</u> (a) that the specified works do not adversely affect the transmission capacity, efficiency or reliability of the ESPL Grid Connection <u>grid connection</u> or the apparatus; <u>(e)</u> (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 <u>(f)</u> (c) that the specification and programme for the specified works are submitted to and approved by ESPL before the commencement of any specified works.	The Applicant has adopted ESPL's wording in relation to the submission of a specification and programme.
That all construction or operational traffic management arrangements within the vicinity of the ESPL Project must be submitted to and approved by ESPL (paragraph 5.5.4)	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.	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.	The Applicant has adopted ESPL's wording in relation to construction traffic.
That in the event of any damage to ESPL's infrastructure, or any interruption in any service provided, the Applicant must: (a) bear and pay the cost reasonably incurred by ESPL in making good such damage or restoring the supply; and (b) indemnify ESPL for all expenses, loss, damages, penalty or costs incurred by ESPL, by reason or in consequence of any such damage or interruption (including for the avoidance of doubt any indirect or consequential loss or loss of profits); (paragraph 5.5.5)	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	40. (1) If, in consequence of the construction of any works authorised by these Protective Provisions <u>this Part</u> 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 <u>this Part</u> 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 <u>45 working</u> 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 <u>reimburse</u> ESPL for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs <u>reasonably and properly</u> 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	The Applicant has substantially adopted the indemnity provided by ESPL. The Amendments made ensure that sufficient time for settlement of the invoice is introduced without introducing a risk of default. The Applicant has also ensured that the indemnity only applies to "reasonably and properly" incurred costs. This is a standard term to ensure that the undertaker is not held responsible for unreasonable and improperly incurred costs of ESPL.

	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.	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<u>this Part</u> 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<u>consent to</u> transfer benefit<u>of the Order</u>) 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<u>this Part</u> 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.	
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Before carrying out any works in the grid connection corridor, the Applicant (or any contractor carrying out such works on its behalf) must put in place a policy of insurance for a level of cover (and subject to such other terms) as is agreed in writing with ESPL (paragraph 5.5.6)	10(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.10	(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<u>procured acceptable insurance</u> (and provided evidence that it shall maintain such Acceptable Insurance<u>acceptable insurance</u> 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.	The undertaker has accepted the provision of acceptable insurance. ESPL's drafting had the undertaker. The Applicant has removed unnecessary drafting in brackets which substantially repeated the restriction not to commence construction until acceptable insurance is in place. The Applicant has deleted (8) on the basis that the undertaker would always remain responsible for adherence to (7) regardless of whether the insurance is provided by a contractor or not and so this stipulation is an unnecessary addition.
The Applicant must pay all reasonable fees, costs, charges and expenses incurred by ESPL in relation to it carrying out its functions under any of the aforementioned protections, including the reasonable costs incurred by ESPL in engaging and retaining such external experts, consultants and contractors.	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) (g) the approval of plans; 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	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<u>incidental to</u> 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 <u>specified works</u>. (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.	The Applicant has accepted the principal of payment to ESPL of their reasonable and proper costs incidental to the inspection, removal alteration or protection of any apparatus pursuant to the Order.

	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.	(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 14¹³ (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.	
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Appendix 4

Applicant's without prejudice protective provisions for the benefit of Highway Authorities

PART []

FOR THE PROTECTION OF HIGHWAY AUTHORITIES

1. The provisions of this Schedule have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority.

2. In this Schedule—

“highway” means a highway vested in or maintainable by the relevant local highway authority as highway authority under the 1980 Act and this definition shall include any bridge or structure carrying a highway;

“specified work” means the works under the Order to create permanent vehicular access to the authorised development or make improvements to existing highways.

Specified works

3.—(1) The undertaker will allow and facilitate an appropriately qualified officer of the relevant highway authority to participate in the design process for any specified work and will have reasonable regard to any views of that officer in finalising the detailed design of that Work, provided always that any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

(2) Any officer of the relevant highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the authorised development which—

(a) is in, on, over or under any highway; or

(b) which may affect any highway,

during the carrying out of the specified work, and the undertaker will give to such officer all reasonable facilities for such inspection (subject to any reasonable adjustments necessary for the safety of such officer) and, if the officer is of the opinion that the construction of the specified work poses danger to any highway or to any property of the relevant local highway authority or danger to persons or vehicles or other property in relation to which the relevant local highway authority might be liable on, in, over or under any highway, the undertaker will adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway or persons or vehicles or other property aforesaid required by the officer.

(3) Any officer of the relevant highway authority exercising the right to inspect works under sub-paragraph (1) must comply with all reasonable health and safety requirements and instructions of the undertaker in doing so.

Street works

4.—(1) Where, under this Order, any street works require to be undertaken to the reasonable satisfaction of the highway authority, this paragraph will apply.

(2) The relevant highway authority will, as soon as reasonably practicable following the receipt of notice from the undertaker that it considers any street works to which this paragraph applies to be complete, carry out an inspection of such street works.

(3) The relevant highway authority will confirm when any street works have been completed to their reasonable satisfaction in writing and will set out in such confirmation the date on which the works were last inspected to establish such reasonable satisfaction. For the period of 24 months from the date of last inspection as stated in the confirmation of reasonable satisfaction, the undertaker will be liable to pay to the relevant highway authority the reasonable costs of repairing or rectifying any defect in the highway which, in the opinion of the relevant local highway

authority (acting reasonably) was caused by or is attributable to the carrying out of street works by the undertaker.

(4) The reasonable costs set out in sub-paragraph (3) may include the costs of the time of the relevant highway authority's officers and employees incurred in the remediation or rectification of a defect as well as the cost of the remediation or repair, whether carried out by the relevant highway authority or on their instruction. The costs payable under sub-paragraph (3) must be paid by the undertaker in full within 30 days of receipt of an invoice for such costs provided that such invoice includes a breakdown of the charges incurred and is accompanied by copies of any invoices received by the relevant local highway authority for works undertaken to remedy or repair the defect.

Arbitration

5. Any difference arising between the undertaker and the relevant highway authority under this Schedule (other than in difference as to the meaning or construction of this Schedule) will be resolved by arbitration under article 43 (arbitration).

Appendix 5

Applicant's without prejudice protective provisions for RWE Generation UK plc

PART []

FOR THE PROTECTION OF RWE GENERATION UK PLC

Application

1. For the protection of RWE the following provisions have effect, unless specific provision to the contrary is agreed in writing between the undertaker and RWE.

Interpretation

2. In this Part of this Schedule—

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

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

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

“acceptable security” means either—

- (a) a parent company guarantee from the parent company in favour of RWE to cover the undertaker's liability to RWE to a total liability cap of £25,000,000 (twenty five million pounds) (in a form reasonably satisfactory to RWE and, where required by RWE, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of RWE to cover the Undertaker’s liability to RWE for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty five million pounds) (in a form reasonably satisfactory to RWE);

“alternative apparatus” means alternative apparatus adequate to the satisfaction of RWE to enable RWE 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 RWE in order to permit or authorise a diversion and to permit or authorise RWE 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) and any associated fibre optics and communications cables including any structure or support, belonging to or maintained by RWE and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“emergency works” has the same meaning as in section 52 of the New Roads and Street Works Act 1991;

“functions” includes powers and duties;

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

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

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by RWE acting reasonably;

“RWE” means RWE Generation UK Plc (Company Number 03892782) whose registered office is at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB;

“specified works” means any of 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 5(2) or otherwise; and/or (b) may adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 5(2);

On street apparatus

3. Except for paragraphs 7 (retained apparatus), 8 (expenses) and 9 (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 RWE, this Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and RWE are regulated by the provisions of Part 3 (Street works in England and Wales) of the 1991 Act.

Acquisition of land

4. (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 must not—

- (a) appropriate or acquire or take temporary possession of any land or apparatus of RWE; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of RWE,

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

(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 development (or in such other timeframe as may be agreed between RWE 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 RWE or affect the provisions of any enactment or agreement regulating the relations between RWE and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as RWE reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between RWE and the undertaker acting reasonably and which must be no less favourable on the whole to RWE unless otherwise agreed by RWE, 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 development.

(3) Save where otherwise agreed in writing between the undertaker and RWE, the undertaker and RWE 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 RWE and/or other enactments relied upon by RWE as of right or other use in relation to the apparatus, then the provisions in these Protective Provisions shall prevail.

(4) Any agreement or consent granted by RWE under paragraph 7 or any other paragraph of these Protective Provisions, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

5.—(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 RWE's apparatus is relocated or diverted, that apparatus may not be removed under this Part of this Schedule and any right of RWE to maintain that apparatus in that land and to gain access to it may not be extinguished until alternative apparatus has been constructed and alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation, and access to it has been provided, to the reasonable satisfaction of RWE 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 RWE 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 RWE reasonably needs to remove or divert any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to RWE the necessary facilities, alternative rights and any necessary third party consent or approvals 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, RWE 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) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and RWE is unable to obtain such alternative rights as are mentioned in sub-paragraph **Error! Reference source not found.**, the undertaker and RWE 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), RWE may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 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 RWE and the undertaker.

(5) 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 RWE and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(6) RWE must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43 (arbitration) and after the grant to RWE of any such facilities and alternative rights as are referred to in sub-paragraph (2) to (4), 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.

(7) Regardless of anything in sub-paragraph (6), if the undertaker gives notice in writing to RWE 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 RWE, must be executed by the undertaker—

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

(8) Nothing in sub-paragraph (7) 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 apparatus.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to RWE 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 RWE or in default of agreement settled by arbitration in accordance with article 43 (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 RWE than the facilities and alternative 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 RWE as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

7.—(1) Not less than 56 days before the undertaker intends to start the commencement of any specified works the undertaker must submit to RWE a plan in respect of those works.

(2) In relation to specified works, the plan to be submitted to RWE 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) The undertaker must not commence any specified works to which sub-paragraphs (1) and (2) apply until RWE has given written approval of the plan so submitted.

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

- (a) may be given subject to reasonable requirements for any purpose mentioned in sub-paragraphs (5) or (8) provided that any requirements are communicated to the undertaker within a period of 56 days beginning with the date on which a plan is submitted to RWE in accordance with sub-paragraph (1); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any specified work to which sub-paragraphs (1) and/or (2) apply, RWE 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 provided that RWE must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to RWE.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and RWE and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (8) by RWE for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and RWE will be entitled to watch and inspect the execution of those works.

(7) If RWE, in accordance with sub-paragraph (5) 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.

(8) Where RWE 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 RWE's reasonable satisfaction prior to the commencement of any specified works for which protective works are required and RWE must give notice of its requirement for such works within 56 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(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 RWE notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6) and (8) insofar as is reasonably practicable in the circumstances.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to RWE (within 30 days of an itemised invoice or claim from RWE) the reasonable expenses incurred by RWE 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 5(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 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,

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 43 (arbitration) to be necessary as a consequence and for the purpose of the authorised development, 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 RWE 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 5(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 RWE 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 RWE 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.

Indemnity

9.—(1) Subject to sub-paragraphs (2) to (6), if by reason or in consequence of the construction of any of the specified work or any subsidence resulting from any of those 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 RWE, or there is any interruption in any service provided, or in the supply of any goods, by RWE, the undertaker must—

- (a) bear and pay the cost reasonably incurred by RWE in making good such damage or restoring the supply; and
- (b) indemnify RWE for any other expenses, loss, damages, penalty or costs incurred by or recovered from RWE, by reason or in consequence of any such damage or interruption or RWE becoming liable to any third party other than arising from any default of RWE.

(2) 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 act, neglect or default of RWE, its officers, servants, contractors or agents;
- (b) any specified works and/or any other works authorised by this Part of this Schedule carried out by RWE 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 specified works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 9;
- (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;

(3) RWE must give the undertaker reasonable written notice of any such claim or demand and no settlement, admission of liability or compromise, unless payment is required in connection with a statutory compensation scheme, is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) RWE 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.

(5) RWE must use all reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within RWE'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 RWE's control and if reasonably requested to do so by the undertaker RWE must provide an explanation of how the claim has been minimised, where relevant. The undertaker will only be liable under this paragraph for costs expenses, loss, demands, and penalties reasonably and properly incurred by RWE.

(6) The undertaker must not commence construction (and not to permit the commencement of such construction) of the specified works on any land owned by RWE or in respect of which RWE has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of RWE's apparatus unless and until the undertaker has procured acceptable insurance and acceptable security (and provided evidence to RWE that it shall maintain such acceptable insurance and acceptable security for the construction period of the specified works from the proposed date of commencement of construction of the specified works).

Enactments and agreements

10. 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.

Co-operation

11.—(1) Where in consequence of the proposed construction of any part of the specified works the undertaker or RWE requires the removal of apparatus under paragraph 5(2) or RWE makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker shall use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the specified works and taking into account the need to ensure the safe and efficient operation of RWE's undertaking and RWE shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Whenever RWE'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

12.If in consequence of the agreement reached in accordance with paragraph 4 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 RWE to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13. Any difference or dispute arising between the undertaker and RWE under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and RWE, be determined by arbitration in accordance with article 43 (arbitration).