Canal & River Trust
Making life better by water

Your Ref EN010148

Our Ref IPP-229

Tuesday 22nd September 2026

EN010148 Deadline 6; Canal & River Trust (interested party reference [redacted]

Canal & River Trust's responses to the Examining Authority's commentary and questions on the draft Development Consent Order Issued on 11 August 2026

The following paragraphs respond to the questions directed by the ExA to the Canal & River Trust (the Trust).

Question reference DCO 2.4

Question directed at the Trust: ***Could CRT please provide a response to the applicant's deadline 5 response [REP5-042] to CRT deadline 4 submissions?***

1. The Trust welcomes the Applicant's commitment (see p4 of [REP5-042]) to amend article 9(1)(h) of the draft DCO to remove the words "materially adverse". We note that the draft DCO submitted at deadline 5 did not show this amendment.

2. The Trust considers the tailpiece proposed by the Applicant "unless such an impact is authorised by the provisions of Schedule 14" would not make sense. The historic acts listed in Schedule 3 of the draft DCO are part of the enabling acts of the Trust. They are the equivalent of modern-day DCOs, providing an undertaker with the powers it needs to carry on its undertaking. Disapplying parts of that legislation has the potential to remove the Trust's powers to carry on its navigation undertaking. If that was the case, it would bring into question (a) whether the Trust was able to properly carry on its navigation undertaking and (b) whether the Trust would have the power to grant the consents for detailed design etc provided in the protective provisions.

3. Since the Applicant does not, understandably at this stage, have detailed designs of the parts of the proposed development that would affect the Trust's network, the protective provisions provide mechanisms, to be used in the future, to agree detailed designs, working methods etc with the Trust. The Trust is seeking this protection in a way that would not impede delivery of the proposed development as the Trust's consent is not to be unreasonably withheld or delayed.

4. Please see below for our comments on the Applicant's proposal to prevent maintenance of the canal.

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Question reference DCO 9.4

Question directed at the Trust: ***Table 2 of the applicant's justification for preferred protective provisions [REP5-040] suggests in part that the CRT is seeking a much higher liability cap than was agreed for the made West Burton, Gate Burton, Cottam and Tillbridge DCOs.***

Could CRT please confirm why it is seeking a higher liability cap in respect of this proposed development?

The reason for seeking a liability cap of £100 million is set out in the Trust's deadline 5 submission [REP5-061]:

The liability caps observed in other DCOs reflect the proposed NSIP infrastructure and the surrounding environment. In the case of the solar farm DCOs cited, with proposed cable crossings under the river Trent, the environment is a navigable river, where the river bed is naturally formed.

In contrast, the proposed cable crossing of Tween Bridge Solar NSIP is below a manmade canal. The crossing point is on a 10 mile 'pound' (the stretch of water between lock gates). Along this stretch, the canal is approximately 30m wide and 2.5 to 3m in depth and holds a significant amount of water. The Trust does not hold any breach modelling for this location. The canal also supplies water to Keadby 2 power station (in operation) for cooling purposes. The provision of water for cooling purposes is also required for the Keadby 3 scheme, which benefits from development consent.

The cap of £100m is proposed as a precautionary estimate of potential losses from any damage to the canal in this location. In the absence of detailed information such as drill profile drawings, drill diameter, settlement calculations, bore logs, RAMS, or flood modelling, the Trust is not in a position to revise that cap downwards.

The key difference between the schemes is the fact that one is a natural feature (the River Trent), the other (a canal) is manmade. The risk associated with each is therefore different. The Trust has explained to the Applicant that if it provided further information to the Trust, the Trust would consider that information.

When considering the indemnity, it is also relevant to highlight the Trust's charitable status and the basis on which it holds the waterways and related assets for the public benefit, explained in paragraph 2 of the Trust's response to deadline 5 [REP-061]. See also the explanation below in the table of differences in proposed protective provision drafting (DIFFERENCE E).

Question reference DCO 9.4

Question directed at the Trust: ***CRT's deadline 5 representation [REP5-061] is noted. However, could CRT please confirm the following***:

1: What is CRT's current position if the applicant's preferred PPs [REP5-040] are adopted, with specific regard to the statutory tests set out at s127 of the Planning Act 2008? In particular, please confirm whether (and if so, how) the proposed development would cause serious detriment to the carrying out of CRT's undertakings.

2: If agreement cannot be reached, please provide your preferred protective provisions for the specific areas of disagreement at deadline 6 (notwithstanding that the ExA acknowledges that negotiations with the applicant are ongoing).

The Trust welcomes the protective provisions currently preferred by the Applicant are substantially in line with the Trust's standard protective provisions and thanks the Applicant for constructively engaging with the Trust. The Trust and the Applicant have agreed to let the matters outstanding between the organisations be determined by the Secretary of State on the basis of submissions in the examination.

Accordingly, enclosed with this letter are (a) a copy of the Trust's preferred protective provisions and (b) a Word compare document, comparing these with the text of the protective provisions in the draft DCO submitted by the Applicant at deadline 5 [REP5-002]. The comparison document highlights the provisions that the Applicant and the Trust have not been able to agreed. Set out in the table below, for each of these differences is:

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- the explanation for the Trust's preferred drafting; and, because the Applicant maintains that compulsory acquisition powers over Trust land should be granted without any constraints due to the protections provided in the protective provisions (paragraph 3.3 of [REP5-040],
- the reasons why adopting the Applicant's drafting would mean the proposed development would cause serious detriment to the carrying out of the Trust's undertaking.

In the introduction to the *Justification for the Applicant's Preferred Protective Provisions (Rev 2)* document [REP5-040], the Applicant identifies that, "*The protective provisions must strike an appropriate balance between safeguarding the legitimate interests of Statutory Undertakers and ensuring that the powers conferred by the Order remain capable of being exercised effectively*." (paragraph 1.1). The Trust requests the Secretary of State consider that proper protection of a statutory undertaker's undertaking does not equate to rendering a DCO undertaker's powers incapable of being exercised effectively. The need for NSIPs is recognised in national policy, however, in solving one problem, the creation of other problems should be avoided or at least minimised. Also, unless a statutory undertaker is funded and set up in a way that enables it to accommodate the impacts of an NSIP, a statutory undertaker should not bear increased burdens or face increased risks as a result of an NSIP.

DIFFERENCE A	Definition of "detriment". The Trust's standard protective provisions refer to damage "caused by the presence of the authorised development". Removing "the presence of" could open up debate about whether any damage to the waterway had been actively caused by the authorised development and consequent debate about who should bear the burden of remedying the situation. The starting position should be that, subsequent to the grant of the DCO, the Trust is left in the same position as it would be without the authorised development. Adopting the Applicant's preferred drafting could lead to serious detriment to the carrying out of the Trust's undertaking. If damage to the waterway caused by the presence of the authorised development was not something that had to be taken into account in the construction of the authorised development nor something that the undertaker had to make good. (For example, if ground conditions altered due to the presence of the authorised development with consequent stresses on, and eventual breach of, the waterway lining.)
DIFFERENCE B	As explained in the Trust's deadline 5 submission [REP-061] (table on p5), the nature of the works or activities for which the Applicant is seeking a carve out through the drafting at sub-paragraph 29(3) is not clear to the Trust and, so far as the Trust is aware, has not been assessed. The Trust's preferred drafting does not include this carve out as a situation that could prevent maintenance of the Trust's undertaking should be within the Trust's control. The Applicant's drafting could lead to serious detriment to the carrying out of the Trust's undertaking if the undertaker was able to occupy land adjacent to the waterway, in a way that prevented the Trust maintaining its undertaking, without giving the Trust the opportunity to manage that situation. The integrity of the waterway is vital to prevent an uncontrolled release of water, which has the potential to empty a canal pound (the stretch of canal between two locks). By way of example, where developers occupy land adjacent to the Trust's network, the Trust seeks to agree with the developer measures to enable the Trust access to the waterway in the event of an emergency or for routine maintenance. (The anticipated duration of the construction period, lifetime of the proposed development and decommissioning should be noted.) A development site will be subject to Construction

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(Canal & River Trust preferred protective provisions at 12.08.2026, following discussions with the Applicant.)

PROTECTIVE PROVISIONS

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

1. Interpretation

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

(2) In this Part of this Schedule—

"Code of Practice" means the Code of Practice for Works Affecting the Canal & River Trust (April 2025) or any updates or amendments thereto;

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

(a) the execution and placing of that work; and

(b) any relaying, renewal, or maintenance of that work; and

"construct" and "constructed" have corresponding meanings;

"Canal & River Trust's network" means the Canal & River Trust's network of waterways;

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

(a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

(b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;

(c) the deposit of materials or the siltation of the waterway so as to damage the waterway;

(d) the pollution of the waterway;

(e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;

(f) any harm to the ecology of the waterway; and

(g) any interference with the exercise by any person of any lawful rights over Canal & River Trust's network;

"the engineer" means a suitably qualified and experienced engineer appointed by the Canal & River

Trust for the purpose in question;

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

	(Design and Management) (CDM) Regulations and typically, in order that Trust personnel can access the waterway, an area is excluded from the site, Trust personnel are trained to access the site and/or the contractor employs a chaperone.
DIFFERENCE C	The Trust's standard protective provisions contain drafting to ensure that undertakers use any powers of compulsory acquisition and/or temporary possession with its consent, such consent not to be unreasonably withheld or delayed. This is because the Trust is willing to agree reasonable terms with promoters under private treaty and there should be, and is, no need for these powers (per MHCLG guidance, see paragraphs 12-14 of the Trust's deadline 5 submission [REP-061]. However, in case an agreement is not reached before the grant of a DCO, the Trust recognises that the relevant Secretary of State needs to ensure there is no impediment to delivery of an NSIP. It for that reason that the Trust's standard protective provisions allow promoters to use powers of compulsory acquisition and/or temporary possession in circumstances where the Trust does not act reasonably in providing its consent. For the reasons set out in more detail in the Trust's deadline 5 submission (see paragraph 10), the Trust considers it is not fair or accurate to characterise the requirement for the Trust's reasonable consent as a "veto". Paragraphs 8 and 16-19 of the Trust's deadline 5 submission [REP-061] explain further why exercising powers to temporarily use the Trust's land and exercising powers to compulsorily acquire interests in or rights over the Trust's land without the Trust's consent risks causing serious detriment to the carrying out of the Trust's undertaking. In summary, if the requirement to seek the consent of the Trust is removed, and with it the opportunity to put in place reciprocal measures, in land law, that facilitate two undertakers operating side by side, there is a risk of serious detriment to the Trust's undertaking.
DIFFERENCE D	As explained in the Trust's deadline 5 submission [REP-061] (table on p5), the Trust's drafting gives a period including two full winters and two full summers to assess and monitor the impact of the proposed development on the canal. This helps guard against an atypical winter and/or summer season in any one year. Paragraph 39 provides measures intended to be used in order to avoid a detriment (i.e. damage to the waterway). Adopting the Applicant's drafting to only allow the Trust one winter and one summer to assess and monitor the impact of the NSIP on the canal could lead to serious detriment to the carrying out of the Trust's undertaking. If measures needed to avoid a detriment were not identified within the 12 month window, the Trust would not be able, under the protective provisions, to recover the costs associated with those measures. As a charity with funding constraints, either the measures would not be implemented and detriment (e.g. danger to navigation, erosion of the bed or banks of the waterway or alteration to the water level of the waterway) would occur or, the measures would be undertaken at cost to the Trust, taking funds away from operating and maintaining other parts of its network.
DIFFERENCE E	Please see above explanation for the reasons for the level of indemnity sought. If damage to the waterway resulting from the proposed development resulted in losses in excess of the indemnity cap, the Trust would have to recover those extra losses through an action in court. Court proceedings are time-consuming and costly, so although the court would aim to put the Trust back in the position it was before the damage, there

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	would be lost time and resource in bringing the claim. That would be time and resource that is directed away from the carrying out of the Trust's undertaking, potentially causing serious detriment.

Please note that the referencing of paragraph numbers in the draft DCO text is correct save for:

-paragraph 36(1)(e) which should reference paragraph 29, not sub-paragraph 29(2).

-paragraph 41(4), which should reference paragraph 41 not 31.

Yours Sincerely

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

"protective work" means a work constructed under paragraph 5 below, (approval of plans etc.), sub-paragraph (4)(a);

"specified work" means so much of any permanent or temporary work authorised by this Order as is in, across, under, or within 15 metres of, or may in any way affect, the waterway;

"the waterway" means each and every part of the Stainforth & Keadby Canal within the order limits (including any works, lands or premises within the order limits belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with its statutory functions).

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

2. Powers requiring the Canal & River Trust's consent

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

(2) The undertaker must not in the exercise of the powers conferred by this Order do anything which would directly result in the waterway being incapable of being used or maintained, or which would otherwise affect the safe operation of the Canal & River Trust's Network, without the consent of the Canal & River Trust.

(3) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article X (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust.

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

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

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

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

3. Approval of plans, protective works etc.

(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the Canal & River Trust's Code of Practice and such further particulars available to it as the Canal & River Trust may within 15 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

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

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

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

(a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment;

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

(5) The withholding of an approval of the engineer under this paragraph [3] will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule X (Requirements) to this Order.

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

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

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

4. Design of works

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

(1) the design of the specified works;

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

(3) amendments or alterations to the construction environmental management plan, landscape and ecological management plan, operational environmental management plan, decommissioning environmental management plan (as may be approved pursuant to Schedule 2) in respect of a specified work or a protective work or otherwise in connection with the waterway prior to submitting the amendments or alterations to the relevant planning authority for approval under Requirement [X] (Approved details and amendments to them).

5. Fencing

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

6. Notice of works

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

7. Lighting

The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the

engineer may reasonably require during the construction or failure of the specified or protective works.

8. Survey of waterway

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

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

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

(a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and

(b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to the specified works or the method of their construction.

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

9. Construction of specified works

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

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph [3] (approval of plans etc) and paragraph [4] (design of works) of this Part;

(b) under the supervision (if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little detriment as is reasonably practicable;

(d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;

(e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with paragraph [2(2)] (Powers requiring the Canal & River Trust's consent); and

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

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or

otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

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

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph [8] (survey of waterway) and any other information agreed between them pursuant to this Part.

10. Prevention of pollution

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

11. Access to work – provision of information

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

(a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

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

(a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and

(b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

12. Alterations to the waterway

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

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

13. Maintenance of works

If at any time after the practical completion of a specified work or a protective work, not being a work vested in the Canal & River Trust, the Canal & River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the specified work or protective work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

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

(1) Save where otherwise agreed, the undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

(a) in constructing any protective works under the provisions of paragraph [3] (approval of plans etc) sub-paragraph (4)(a);

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;

(c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;

(d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and

(e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

(2) If the Canal & River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal & River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 30 working days—

(a) provide confirmation to the Canal & River Trust that the estimate is agreed and pay to the Canal & River Trust, by the date stipulated, that fee, charge, cost or expense; or

(b) provide confirmation to the Canal & River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and / or paid at a later date.

(3) The Canal & River Trust must take in to account any representations made by the undertaker in accordance with this paragraph [14] and must, within 15 working days of receipt of the information

pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal & River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph [14], do so with a view to being reasonably economic and acting as if the Canal & River Trust were itself to fund the relevant fee, charge, cost or expense.

15. Making good of detriment; compensation and indemnity, etc.

(1) Subject to paragraph 15(3), if any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

(2) Subject to paragraph 15(3), the undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

(a) by reason of the construction of a specified work or a protective work or the failure of such work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work, and subject to sub-paragraph (4),

the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b).

(3) For the purposes of sub-paragraphs (1) and (2) above, the Canal and River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

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

(5) Nothing in sub-paragraphs (1) and (2) imposes any liability on the undertaker with respect to any detriment, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

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

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

16. Arbitration

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

17. Capitalised sums

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

The aggregate cap of the undertaker's gross liability to pay capitalised sums and any other payments or liabilities under the terms of this Part of this Schedule shall be limited to £100,000,000.00 (one hundred million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

18. As built drawings

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

19. Decommissioning

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

~~**(Canal & River Trust preferred protective provisions at 12.08.2026, following discussions with the Applicant.)**~~

~~**PROTECTIVE PROVISIONS**~~

Text from Applicant's DCO submitted at DL5

PART 4

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

~~1.~~ Interpretation

~~(1)~~ 28.—(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule, have effect~~,~~ unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

~~(2)~~ (2) In this Part of this Schedule—

"Code of Practice" means the Code of Practice for Works Affecting the Canal & River Trust (April 2025) or any updates or amendments thereto;

"construction~~",~~" in relation to any specified work or protective work, includes—

~~(a)~~ (a) the execution and placing of that work; and

(b) any relaying, renewal~~,~~ or maintenance of that work~~;~~.

~~(b)~~ and

"construct" and "constructed" have corresponding meanings;

"Canal & River ~~Trust's~~Trust's network" means the Canal & River ~~Trust's~~Trust's network of waterways;

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

~~(a)~~ (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

~~(b)~~ (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;

~~(c)~~ (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;

~~(d)~~ (d) the pollution of the waterway;

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~~(e)~~ (e) any significant alteration in the water level of the waterway~~,~~ or significant interference with the supply of water thereto, or drainage of water therefrom; and

~~(f)~~ (f) any harm to the ecology of the waterway; and

(g) any interference with the exercise by any person of any lawful rights over Canal & River ~~Trust's~~Trust's network;

"the engineer" means a suitably qualified and experienced engineer appointed by the Canal & River Trust for the purpose in question;

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

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

"protective work" means a work constructed under paragraph (5) below~~,~~ (approval of plans etc.), ~~subparagraph (~~sub-paragraph 4~~)~~(a);

"specified work" means so much of any permanent or temporary work authorised by this Order as is in, across, under, or within 15 metres of, or may in any way affect, the waterway; and

"the waterway" means each and every part of the Stainforth & Keadby Canal within the order limits ~~-~~(including~~-~~ any works, lands or premises within the order limits belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with its statutory functions).

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

~~2.~~ Powers requiring the Canal & River ~~Trust's~~Trust's consent

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~~(1)~~ 29.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

~~(2)~~ ~~The~~(2) Subject to sub-paragraph (3), the undertaker must not in the exercise of the powers conferred by this Order do anything which would directly result in the waterway being incapable of being used or maintained, or which would otherwise affect the safe operation of the Canal & River Trust's ~~Network~~network, without the consent of the Canal & River Trust.

(3) The temporary occupation or use of land adjacent to the waterway, arising as a necessary consequence of carrying out the works authorised by this Order will not be treated as rendering the waterway incapable of being maintained for the purposes of sub-paragraph (2), except where the relevant part of the authorised development is a specified work and an approval under paragraph 3(1) has not been provided by the Canal & River Trust.

~~(3)~~ (4) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article ~~X~~20 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust.

~~(4)~~ (5) The undertaker must not exercise the powers conferred by article ~~X~~22 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

~~(5) The undertaker must not exercise any power conferred by article X (temporary use of land for constructing the authorised development) or article X (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust.~~

~~(6) The undertaker must not exercise any power conferred by article X (compulsory acquisition of land), article X (compulsory acquisition of rights), X (acquisition of subsoil) or X (statutory undertakers) in respect of the Canal & River Trust's interests in the waterway unless such exercise is with the consent of the Canal & River Trust.~~

~~(7)~~ (6) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) ~~-~~ ~~(6~~to (5) must not be unreasonably withheld or delayed and may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (Requirements) to this Order.

~~3.~~ Approval of plans, protective works etc.

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~~(1)~~ 30.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the Canal & River Trust's Code of Practice and such further particulars available to it as the Canal & River Trust may within 15 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

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

~~(3)~~ (3) An approval of the engineer under this paragraph ~~[2]~~30 is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (2) has not been given pending the outcome of any consultation on the approval in question that the Canal & River Trust is obliged to carry out in the proper exercise of its functions, provided prior written notice of such consultation has been provided by the Canal & River Trust to the undertaker.

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

~~(a)~~ (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

~~(b)~~ (b) such other requirements as may be reasonably necessary to prevent detriment~~;~~ and such protective works must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

~~(5)~~ (5) The withholding of an approval of the engineer under this paragraph ~~[3]~~30 will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule ~~[2]~~2 (Requirements) to this Order.

~~(6)~~ (6) The undertaker must pay to the Canal & River Trust a capitalised sum representing any reasonably increased and additional cost of maintaining and, when

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necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

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

~~(7)~~ or part of, the specified works or make such works and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

~~4.~~ Design of works

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

~~(1)~~ (a) the design of the specified works;

~~(2)~~ (b) the environmental effects of those works~~;~~, and must have regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and

~~(3)~~ (c) amendments or alterations ~~to~~ the construction environmental management plan, landscape and ecological management plan, operational environmental management plan, decommissioning environmental management plan (as may be approved pursuant to Schedule 2) in respect of a specified work or a protective work or otherwise in connection with the waterway prior to submitting the amendments or alterations to the relevant planning authority for approval under ~~Requirement [x]~~ requirement 5 (Approved details and amendments to them).

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~~5.~~ Fencing

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

~~6.~~ Notice of works

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

~~7.~~ Lighting

34. The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

~~8.~~ Survey of waterway

~~(~~35.—~~(~~1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works, the undertaker must bear the reasonable and proper ~~cost~~costs of the carrying out, by a suitably qualified and experienced engineer (the "surveyor"), to be approved by the Canal & River Trust and the undertaker, of a survey to measure the navigational depth of the waterway and profile of the canal bed ("~~the~~ survey") of so much of the waterway and of any land which may provide support for the waterway as will or may be affected by the specified works~~.~~—

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

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

~~(a)~~ (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for

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access to the site of the specified works and to any land of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and

~~(b)~~ (b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to the specified works or the method of their construction.

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

~~9.~~ Construction of specified works

~~(~~36.—(1) Any specified works or protective works must, when commenced, be constructed—

~~(a)~~ (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph ~~[3]~~30 (approval of plans etc) and paragraph ~~[4]~~31 (design of works) of this Part;

~~(b)~~ (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;

~~(c)~~ (c) in such manner as to cause as little detriment as is reasonably practicable;

~~(d)~~ (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;

~~(e)~~ (e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with paragraph ~~[29(2)~~29(2~~)~~) (Powers requiring the Canal & River Trust's consent); and

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

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

~~(3)~~ (3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise

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agreed between the undertaker and the Canal & River Trust and save to the extent that any deterioration to the condition of the waterway is not caused by the construction of the specified works.

~~(4)~~ (4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph [8]35 (survey of waterway) and any other information agreed between them pursuant to this Part.

~~10.~~ Prevention of pollution

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

~~11.~~ Access to work – provision of information

~~(~~38.—(1) The undertaker on being given reasonable notice must—

~~(a)~~ (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and

~~(b)~~ (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

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

(a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their ~~construction; and~~

construction; and

(b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

~~12.~~ Alterations to the waterway

~~(1)~~ 39.—(1) If during ~~the~~ construction of a specified work or a protective work or during a period of ~~twenty four (24~~ twelve (12) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the

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undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

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

~~13.~~ Maintenance of works

40. If at any time after the practical completion of a specified work or a protective work, not being a work vested in the Canal & River Trust, the Canal & River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the specified work or protective work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

~~14.~~ Repayment of the Canal & River ~~Trust's~~Trust's fees, etc.

~~(~~41.—(1) Save where otherwise agreed, the undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

~~(a)~~ (a) in constructing any protective works under the provisions of paragraph ~~[3]~~30 (approval of plans etc) sub-paragraph (4)(a);

~~(b)~~ (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;

~~(c)~~ (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;

~~(d)~~ (d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and

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~~(e)~~ (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

(2) If the Canal & River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal & River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 30 working days—

(a) provide confirmation to the Canal & River Trust that the estimate is agreed and pay to the Canal & River Trust, by the date stipulated, that fee, charge, cost or expense; or

(b) provide confirmation to the Canal & River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and / or paid at a later date.

(3) The Canal & River Trust must take ~~in to~~into account any representations made by the undertaker in accordance with this paragraph ~~[14]~~41 and must, within 15 working days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal & River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph ~~[14]~~,31, do so with a view to being reasonably economic and acting as if the Canal & River Trust were itself to fund the relevant fee, charge, cost or expense.

~~15.~~ Making good of detriment; compensation and indemnity, etc.

~~(~~42.—(1) Subject to paragraph ~~15~~42(3), if any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

(2) Subject to paragraph ~~15~~42(3), the undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

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~~(a)~~ (a) by reason of the construction of a specified work or a protective work or the failure of such work; or

~~(b)~~ (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work, and subject to sub-paragraph (4),

the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b).

(3) For the purposes of sub-paragraphs (1) and (2) above, the Canal and River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable~~).~~.

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

(5) Nothing in sub-paragraphs (1) and (2) imposes any liability on the undertaker with respect to any detriment, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

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

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

~~16.~~ Arbitration

43. Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with under article ~~4~~45 (arbitration) of this Order.

~~17.~~ Capitalised sums

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

(2) The aggregate cap of the undertaker's gross liability to pay capitalised sums and any other payments or liabilities under the terms of this Part of this Schedule shall be limited to £~~100~~5,000,000.00 (~~one hundred~~five million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

~~**18.**~~ As built drawings

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

~~**19.**~~ Decommissioning

46. Where the decommissioning environmental management plan identifies activities which may impact the waterway, the protective provisions in this Part ×4 of Schedule ×14 will, so far as appropriate, apply to those activities as if they were a specified work.

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